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THE
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OF A
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M DCC XXVI.



THE P R E F A C E.

THE Office of a Justice of Peace did at first consist chiefly in suppressing of Riots and unlawful Assemblies, it being usual in former Times, for Men of Estates to give Liveries every Year to rude and disorderly People, who were not their Menial Servants; and this was to engage them in all their Quarrels for that Year, otherwise they were to forfeit double the Value of those Liveries.

The Justices of Peace in those Days had Power by several Statutes to punish those Offences; which was done sometimes at the Quarter-Sessions, and often upon View, or upon Proof by Witness.

But their Authority being much enlarged, during the Civil Wars, between the Houses of York and Lancaster, and there being no Directions for them in the Execution of their Office, but such as lay dispersed in a Multitude of Statutes; it then became necessary to write something in a peculiar Manner relating to their Office; which was first attempted by Mr. Marrow, in the Reign of King Henry the Seventh, and published by him at that Time.

About twenty Years afterwards, Sir Anthony Fitzherbert, who was a Judge of the Common Pleas, and also another wise Man, (but who he was, Mr. Crompton doth not tell us) collected some other Materials for their Instruction; both

The Preface.

both which were published in the Reign of K. Henry the Eighth.

The Judge's Book was about sixty Years afterwards enlarged by Mr. Crompton, and was then in so great Esteem, that the second Impression of it was sold in less than three Years after the first was published.

And yet Mr. Lambard, who was a learned Man, and certainly a very competent Judge, did not think that Book a sufficient Guide to those Magistrates; because about twenty Years after it was published, he wrote another Treatise on the same Subject.

Upon this Foundation, Mr. Dalton compil'd his Country Justice, which appears very plainly throughout that whole Book; for in many Places it is no more than a Repetition of what was written by them, and because he would not alter the Sense, he has often transcribed it Word for Word.

Of this Nature are all the Books publish'd since that Time, relating to this Matter, which are transcrib'd from each other without Order or Method; and therefore I shall take no further Notice of them, but give the Reader some short Account of the following Sheets.

And first, I can give no better Reason for my Undertaking this Work, than Mr. Dalton alledged several Years since; who tells us, That the Expiration and Discontinuance of many Statutes, put him upon composing his Book; and I think the Repeal of many Old, and the Additions of such a vast Number of new Statutes since he wrote, may reasonably pass for an Excuse as to this Matter.

And as to the Book it self, I think nothing material is omitted therein, which hath hitherto been written upon this Subject; and to avoid Repetitions, I have collated the Whole under several Heads in an Alphabetical Manner.

And since Justices of the Peace are now enabled by several Statutes to hear and punish Persons out of Sessions, (which was rarely done in former Days, but in Cases of Force and Riots) I have under each Title mentioned all Things proper to it; and where Indictments will lie for the Offence, they are added to each Title; and where a more summary

The Preface.

Summary Way of Punishment is necessary, I have added Warrants proper for such Purposes, viz. in all Cases where the Justices have Power by Law to punish Offenders out of Sessions, some of which Warrants are upon new Statutes, and never printed before.

I have avoided as much as possible, all obsolete Words and Things which are of no Use, or which are composed in a Style or Method not suitable to the present Age.

I have likewise added some new Titles, which tho' not immediately relating to the Office of a Justice of Peace, yet are not altogether impertinent to the subject Matter; and I have left out many Things which serve only to stuff and enlarge a Book, and which are neither useful nor pleasant to the Reader.

In this Edition, I have taken a more particular Care, to add to each Title such Resolutions which have been made in the superior Courts at Westminster, and which properly relate to such Titles: And this, I hope, may prove both pleasant and instructive to all inferior Magistrates, without taking any Pains or Trouble to search any further into the many larger Volumes of the Law.

I have taken this Method, because those Justices of the Peace who are not Lawyers, are seldom furnished with such Books, and not often with Keble's Statutes. So that I think it impertinent to annex any Tables of References to such Statutes (which some new Revisors of this Subject have lately done) because those Gentlemen are usually diverted from reading long and accumulated Acts of Parliament, by the innocent Pleasures and Affairs of a Country Life.

Therefore I have chosen under each Title to mention so much of any Statute to which it relates, and to shew (amongst other Things) what Judgments have been given in those Superior Courts relating to it; which I have done with that Exactness, that I think there is not one Case omitted in all the printed Reports which I have not applied to the Title it concerneth, and this was never yet done by any of those who have composed former Books of this Nature.

So that now those Justices of the Peace, who can spare but very little Time to peruse these Sheets, may be so well informed

The Preface.

formed in every Thing concerning their Office, that they may act in Conformity to the great Courts above, and by this Means keep up the Dignity and Reputation of the Court of Quarter-Sessions; where, by a plain and easy Distribution of Justice, the Peace may be preserved throughout the whole Country. And if this is done, as it ought, their Judicature will not be despised, nor their Administration exposed to Reflection, as too often it is.

The several Editions in so short a Time after the first Publication of this Book shew, That it hath been of some Use to those for whom it was designed; 'tis true, A young Lawyer, who was robbed of an old Watch and a little Money near the Bath, refused to be directed by any scribbled Book, the right Way to apprehend the Robbers; the Justice to whom he applied, tho' a Man of Sense and Learning himself, told him, That in such Affairs he had no other Guide, and thereupon gave him the Statute-Book: But he was as far to seek for the Statute of Winton as he was for his Money, and had as much Occasion for a Hue and Cry after one as the other; this was some Diversion to the Justice, and made him have a better Opinion of the Book, but not of the Conduct of the Lawyer, tho' he was at that Time a General in the Law.

W. N.

Abjuration.

Abjuration.

THIS was a Punishment inflicted at Common Law for 2 Inst. 201. Felony only, and then the guilty Person did usually fly to the Sanctuary of some Church, where he was to confess the Fact before the Coroner of the Place within forty Days, and then was to take an Oath to be banished perpetually, but not to a Country of Infidels.

Some Alterations were made of the Common Law by subsequent Statutes, as by 21 H. 8. the Coroner after the Confession, and before the Abjuration, was to cause the Offender to be marked with the Letter *A.* on the right Thumb.

In the next Year, the Parliament thought perpetual Banishment too great a Punishment for some Felonies; and therefore it was enacted, That such Offenders should not depart the Realm, but that they might go to some Sanctuary which they themselves should choose, there to remain during Life. 22 H. 8. cap. 14.

By this and other Statutes, Abjuration was made so very intricate, that the Parliament, Anno 1 Jac. repealed all these Laws which were made concerning it, before 35 Eliz. and afterwards, Anno 21 of his Reign, the Privilege of Sanctuary and all its Dependencies were quite abolished. 21 Jac. cap. 28.

But Abjuration by Virtue of the Statute 35 Eliz. remained still, because it had no Dependence upon the Privilege of Sanctuary; 'tis a Statute made wholly against Popish Recusants convicted, above 16 Years, enjoining them not to remove above 5 Miles from their Habitation; if they do, and not being Convert, nor having Land to the Value of 20 Marks *per Annum*, or Goods worth 40 *l.* they must abjure the Kingdom before two Justices of Peace or Coroner; which Abjuration must be certified by them to the next Assizes; and 'tis Felony, without Benefit of Clergy, if they do not depart within the Time limited by the Justices or Coroner, or departing and returning again without the King's Licence first obtained. H.P.C. 228. 35 Eliz. c. 2.

It is the Opinion of *Lambard*, that such Abjuration must be made before two Justices at the Quarter-Sessions, and entered on the Rolls of the Court by the Clerk of the Peace. Lam. 605.

But because at Common Law no Man could suffer perpetual Banishment but in Cases of Felony, therefore several Acts of Parliament have been made to inflict that Punishment upon other Offenders.

Accessaries.

3 Ed. 3.
cap. 20.

As upon Trespassers in Parks and Ponds, if they cannot give Security by Recognizance to the King with two Sureties in 10 l. each, and the Party himself in 20 l. never to offend again in the like Nature.

9 H. 3.
cap. 10.
35 Eliz.
cap. 1.

Upon Deer-Killers, who, after an Imprisonment for a Year and a Day, cannot give the like Security.

And likewise upon Persons who absent themselves from Church without just Cause, and refusing to conform within three Months after Conviction, and to make such Submission as required by the Statute, being demanded to do the same by a Justice of Peace.

This Act was put in Execution against a Protestant Dissenter, Dr. *Chancey*, a Physician of *Bristol*, who abjured the Realm in the Reign of King *James II.* but he was restored by a Special Pardon.

1 W. & M.
Sess. 1. c. 1.

But now those Penalties are taken away by the Statute 1 W. & M. upon taking the new Oaths, and subscribing the Declaration therein mentioned.

Abjuration & Oath. See Oath.

Accessaries.

Who are
Principals,
and in
what Cases,
and where
there are
no Accessa-
ries.

IN High Treason, the Procurers before the Fact, or the Receiver of a Traitor afterwards, knowing him to be so, is a Principal.

In all other Felonies, and in Forcible Entries, Riots and all Trespasses, the Aiders, Consenters, or Abettors, if they are present at the Time when the Fact is committed, though 'tis Personal and done by one, yet these are all Principals; but if not present, then they are Accessaries before: So likewise if they be in the same House, tho' not in the View of the Felony.

Dalt. 353. But in Murder, there may be a Principal, though not pre-
H.P.C. 215. sent when the Fact is done; as where one knows Drink to be
3 Inst. 59. poisoned, and perswadeth another to drink, who drinketh,
H.P.C. ibid. and dieth in the Absence of him who perswaded it, yet it is
Dalt. 353. Murder in him.

The Procurers and Abettors in stealing of a Woman, and those who receive her, knowing her to be stol'n, are all principal Felons.

4 Co. 44.
3 H. 7. c. 2. So upon the Statute of 5 Eliz. of Forgery of Writings, all are Principals.

Accessaries The Presence or Absence of the Party makes the Difference before the Principal Offender and the Accessary before the Fact.

Dalt. 354. Fact; for if he is present, then he is a Principal, if he encourage, advise or abet; but if absent when the Thing is done, then he is Accessary before the Fact.

Dalt. 354. If a Felony, of another Nature than what was advised, doth proceed from the Abetting or Encouragement given by any ill

Man,

Accessaries.

3

Man, he is likewise an Accessary to it ; as if he adviseth one Man to rob another, and instead thereof, he killeth him making Resistance : In this Case, the Abettor is accessary to the Murder, because his Advice was pursued to do an ill Act, which maketh him Accessary to all the Consequences thereof.

So 'tis if the Advice or Command was executed in another Manner, at another Time, or in any other Place than where commanded.

As if the Command is to rob in the Highway, and instead thereof the Person is robbed in his House ; or to poison a Man, and he stabs him ; or to rob him one Day, and he doth it another Time ; in all these Cases, he is Accessary before the Fact.

If a Man is in Confederacy with another to steal his own Goods, who stealeth them accordingly from his Servant with an Intent to charge the Servant, this maketh him an Accessary.

And in all Felonies which are made so by Statutes, and which were not so at Common Law, there are Accessaries both before and after the Fact ; the Abettors, Aiders, Concealers and Receivers, are not named in the Statute, excepting only in Felony, for carrying away a Woman against her Will, upon the Statute of 3 H. 7. in which Case all are Principals.

When the Felony commanded is executed upon another Person. As if D. adviseth a Man to kill another by Poison, who knowing thereof delivereth it to another to eat, who eateth and dieth, this is Murder ; but the first Adviser to poison is not Accessary to it.

So where there is a Variance in the Nature of the Offence ; as if I command a Man to rob another in the Highway, and he commits Burglary.

So where one doth more than is commanded ; as if I command a Man to apprehend another, and instead thereof he robs him ; for there must be an evil Purpose of Mind continuing till the Act commanded be compleated, to make a Man an Accessary before the Fact.

There can be no Accessaries before the Fact in Case of Manslaughter, for it is an Offence which follows upon a sudden Affray. 4 Rep. 44.

The Principal must always be named in the Indictment against an Accessary, and ought to be first attainted, otherwise the Accessary cannot be tried, for by the Acquittal of the one, the other is discharged.

If an erroneous Judgment be given against the Principal, yet the Accessary must be tried, but if the Principal die before Attainder, or is acquitted by Verdict ; or if after Conviction he hath had the Benefit of the Clergy, or is pardoned ; or if 'tis found by Verdict that he killed another *se defendendo*, or *per infortunium*, in all these Cases, the Accessary is discharged.

So 'tis if the Principal is burnt in the Hand, the Accessary is thereby acquitted.

Accessaries.

By the Common Law there could be no Accessary in one County to a Felony done in another, because those of a strange County could not upon the Trial have any Cognisance of the principal Offence; but this is now remedied by the Statute 2 & 3 Ed. 6. cap. 24. (*viz.*) That if a Felony is done in one County, and there are Accessaries in another, they may be indicted as Accessaries.

1 Annæ,
c. 9.

The Law seemed defective in this Matter, (*viz.*) That no Accessary could be convicted or suffer Punishment where the Principal was not attainted or had his Clergy, and by this Means the Contrivers of Felonies, and the Receivers of stol'n Goods, often were unpunished; therefore a late Act was made, That if a Man is convicted of Felony, or stands mute, or challenges above twenty of the Jury, it shall be lawful to proceed against the Accessary, notwithstanding the Principal had his Clergy, was pardoned, or otherwise delivered *before Attainder*; and such Accessary shall suffer the same Punishment, if convicted, stands mute, or challengeth above twenty, as he should have suffered, if the Principal had been attainted.

By this Act, he that *buys or receives* stol'n Goods, knowing them to be stol'n, shall be prosecuted for a Misdemeanour, and fined and imprisoned, though the Principal is not convicted; and if he happen to be convicted afterwards, that Punishment shall exempt the *Receiver*, &c. from being again punished as an Accessary.

After the
Fact.

It was formerly held, that he was an Accessary after the Fact, who received or aided a Felon, though he did not know any Felony was done, but then the Receiver must dwell in the same County where the Felon was outlawed; and the Reason was, because upon the Outlawry he is a Felon upon Record, and the Proceedings being in the County-Court, all the Inhabitants of the County ought to take Notice of it: But this was thought too severe, and therefore now a more particular Knowledge of the Fact is required.

Who is Accessary after Fact.

Those who willingly receive Felons, or relieve, assist, comfort, or aid them, knowing they have committed Felony, are Accessaries after the Fact.

The Fact to which the Party is an Accessary, must be Felony at the very Time in which he becomes an Accessary; and therefore the Receiver of one who gave a mortal Wound to another before the Death of the Party struck, is not an Accessary to the Murder, because it would not be Felony in the Receiver at the Time of the Stroke given, for the Man was then living.

In Goods stol'n, and bought afterwards.

He who buyeth stoln Goods for less Value than they are really worth, seems to consent to the Stealing; for by an Under-Value, it appeareth that the Seller did not come by such Goods honestly.

But Dalton makes a Difference in this Case, between a Buyer

Accessaries.

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Buyer who is a Stranger, and one who is an Acquaintance of the Thief; for if a Stranger buy stoln Goods for near the Value, he is not punishable; but if a Companion of the Felon buy the Goods which he stole for less Value, this he says is by Conviction, and makes him an Accessary after the Fact. Formerly to receive Goods stoln, knowing them to be stoln, did not make an Accessary, unless he did likewise receive the Thief.

But now by the Statute 3 & 4 W. & M. cap. 9. buying or receiving stoln Goods, knowing them to be stoln, makes an Accessary to the Felony after the Fact.

If the Owner hath complained to a Justice of Peace, or to a Retaking Constable, or if the Felon be taken upon Hue and Cry, or otherwise, and then the Owner takes his Goods, or compounds with the Felon, or consents to his Escape; this makes him an Accessary after the Fact, because he did once act against the Offender *criminaliter*.

But if in Pursuit he taketh his Goods, and suffereth the Felon to escape before any Complaint made to the Justice, or without being charged, &c. This is a Misdemeanor, for which he may be fined; but it doth not make him an Accessary, because *in initio* he has Liberty *agere civiliter vel criminaliter*.

A Servant is so by relieving his Master, being a Felon, or by assisting him to escape; for he is bound to accuse him, or to depart his Service; and so is the Master by relieving his Servant.

So a Husband receiving a Wife, knowing her to have done a Felony, *sed non e converso*.

Also those who receive a Man bailed for Felony.

Or relieve a Felon in Prison.

To send Letters or Messengers in his Favour, to teach him Who are to read, or to advise him that he endeavour to persuade the Witnesses not to appear against him at his Trial.

Not to reveal a Felony, which I know is intended to be done, or suffering a Felon to escape, but giving him no Assistance.

Rules concerning Principal and Accessary.

Ex *vi Termini*, the Principal is to be tried before the Accessary, and therefore one Cholmley, Recorder of Lincoln, was turned out of his Office for trying the Accessary first. Vent. 146

If the Principal is acquitted or convicted of Manslaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardoned, or dieth, the Accessary is acquitted: But this must be before Attainder; for if afterwards, the Accessary shall be arraigned. Raym. 47

If the Principal doth not appear, or appearing, stands mute, the Accessary cannot be tried; if he is not attainted, the Accessary shall not be outlawed: If a Man is indicted as Accessary to two Principals, one of which happens to be convicted, and the other doth not appear; yet the Accessary shall be

tried, and may be condemned if found Accessary to the Party convicted, and may again be arraigned as Accessary to the other when he appeareth.

If both Principal and Accessary plead to the same Felony, they may be tried by the same Jury; but Judgment must first be had against the Principal, and the Jury must be charged to acquit the Accessary, if they find the Principal Not guilty.

9 Rep. 119. The Accessary shall not take Advantage of any Error in the
B. Attainder of the Principal.

Dalt. 358. Where a new Felony is made by Statute, which was not so at Common Law, there may be Accessaries, though not named in the Statute.

In an Indictment against an Accessary, you must set forth the Manner of the Felony, and that the Defendant knowing him to have done such a Felony, *Felonice recepit, &c.*

If a Criminal is indicted as Principal, and acquitted, he cannot afterwards be indicted as Accessary *before that Fact*, because he who advises the Thing to be done, is in a Manner guilty of the Fact it self; and being acquitted of that, he is discharged of all Guilt before the principal Fact committed.

But notwithstanding such Acquittal, he may be indicted as *Accessary after the Fact*, because such an Accessary cannot be guilty of committing the Fact it self, for that was done before he knew any Thing of it. *Kelynge 26.*

Indictment against an Accessary before the Fact.

Midd. ss. JUR. &c. quod cum R. C. nuper de Lond. Beoman, & J. J. nup. de Lond. pzed. Beoman, Deum pze oculis suis non habentes, sed instigatione Diabolica seduct. 11 die Maii Anno Regni, &c. apud London, viz. in Paroch. sancti Dunstani in occident' in warda de Faringdon extra, vi & armis, &c. felonice ac ex malitiis suis pzeogitatis in & super quendam Johan. Turner, adtunc & ibidem in pace Dei & dicti Dom' Regis existen' insultum & affraiam fecerunt & pzed R. C. quoddam tormentum (Angl' vocat' a Pistol) baloz' quinq; solis dozum adtunc & ibidem onerat' cum pulbere bombardico & glandine plumbea (Angl' charged with Gunpowder and Leaden Bullet) quod quidem tormentum idem R. C. in manu sua dextra adtunc & ibidem habuit & tenuit in & super pzezat' J. T. adtunc & ibidem felonice voluntarie & ex malitia sua pzeogitata sagittabit & eronerabit (Angl' did shoot and discharge) & pzed R. C. cum glandine plumbea pzed' e torment' pzed' adtunc & ibidem emiss. pzezat' J. T. in & super sinistram mamillam ipsius J. T. adtunc & ibidem felonice percussit dans eidem J. T. adtunc & ibidem cum glandine plumbea pzed' e torment' pzed' adtunc & ibidem emiss. in & super sinistram partem pectoris ipsius J. T. unam plagam mortalem latitudinis dimid' unius pollicis & pzeofunditatis quinq; pollicium de qua quidem plaga mortali pzed' J. T. apud London' pzed' in parochia & warda pzed'

Addition.

7

pzed' * instanter obiit & pzed' J. J. felonice & ex malicia sua pze- * *If the Death is not*
 cogitata adtunc & ibidem fuit pzelens auxilians assistens abet- *immediate-*
 tans confortans & manutenens pzetat' R. C. ad felon' & mur- *ly, then say,*
 dzum pzed' in forma pzed' felonice faciend' & perpetrand' & sic *Languet*
 pzed' R. C. & J. J. pzetat' Johan. Turner apud London' pzed' & languet *us vixit*
 in paroch' & warda pzed' modo & forma pzed' felonice voluntarie *usque ad*
 & ex malitiis suis pzeogitatis interfecerunt & murtheraverunt *primum*
 contra pacem dicti Domini Regis coron' & dignitat' suas. *diem Junii,*
 qd quidam Robertus Creighton nuper de Paroch' &c. Armig' *Anno, &c.*
 Deum pze oculis suis non habens sed instigatione diabolica se- *quo quid-*
 duct' ante feloniam & murdzum pzed' per pzetat' Robertum Car- *dem primo*
 liel & Jacobum Irwing modo & forma pzed' fact' & perpetrat' *die Junii,*
 viz. decimo die Maii Anno Regni, &c. pzed' Robertum Carliel *Anno, &c.*
 apud paroch' pzed' in Com' pzed' ad feloniam & murdzum pzed' *præd. J. J.*
 modo & forma pzed' faciend' & perpetrand' malitiose felonice *de plaga*
 voluntarie & ex malitia sua pzeogitata incitabit mobit abetta- *mortali*
 bit consuluit & procurabit contra pacem dicti Domini Regis *præd. obiit.*
 nunc coronam & dignitatem suas.

Upon this Indictment, Robert Creighton, Lord Sanchar, was The Acces-
 convicted, and executed in the Palace-Yard, in the tenth Year sary before .
 of King James the first.

Upon all these Indictments of Accessories before and after
 the Fact, the Course is to set forth the Fact in the Indictment,
 and conclude it, *contra pacem dicti Dom. Reg. coron. & dignitatem*
suas; and then if the Indictment be against an Accessary before *Accessary*
 the Fact, you go on and say, Et quod quidam J. O. nuper de *before the*
 H. in Com' pzed' Deoman, 23 die Augusti, Anno, &c. ac dibe- *Fact.*
 ris diebus & temporibus ante feloniam & murdzum (or as the
 Fact is) pzed' in forma pzed' fact' & perpetrat' apud H. pzed'
 in Com' pzed' malitiose & felonice consuluit mandabit procu-
 rabit incitabit & abettabit pzed' (the Offender) ad pzed' felo-
 niam & murdzum (or as the Fact is) voluntarie faciend' & pe-
 petrand' contra pacem, &c.

If after the Fact, then the Form is thus, viz.

Quod J. O. de H. in Com' pzed' Deoman, post murdzum & *Accessaries*
 feloniam pzed' in forma pzed' fact' sciens pzel' (the Offender) *after the*
 feloniam & murdzum pzed' in forma pzed' fecisse & perpetrasse *Fact.*
 ipsum (the Offender) apud H. pzed' in Com' pzed' vicesimo
 quarto die Augusti, Anno Regni, &c. felonice receptabit aux-
 iliabit & confortabit contra pacem, &c.

Addition.

BY the Statute of 1 H. 5. where Process of Outlawry lieth, 1 H. 5. c. 5.
 the Condition and Dwelling of the Defendant must be in-
 serted, or else the Outlawry is void.

But if there is no proper Addition of either Mystery or Place Cro. Eliz.
 in an Indictment for *Encroaching on a Highway*, 'tis good, be- 148.
 cause a *Distress* and not Process of Outlawry, lieth in that Case.

tried, and may be condemned if found Accessary to the Party convicted, and may again be arraigned as Accessary to the other when he appeareth.

If both Principal and Accessary plead to the same Felony, they may be tried by the same Jury; but Judgment must first be had against the Principal, and the Jury must be charged to acquit the Accessary, if they find the Principal Not guilty.

9 Rep. 119. The Accessary shall not take Advantage of any Error in the
B. Attainder of the Principal.

Dalt. 358. Where a new Felony is made by Statute, which was not so at Common Law, there may be Accessaries, though not named in the Statute.

In an Indictment against an Accessary, you must set forth the Manner of the Felony, and that the Defendant knowing him to have done such a Felony, *Felonice recepit, &c.*

If a Criminal is indicted as Principal, and acquitted, he cannot afterwards be indicted as Accessary *before that Fact*, because he who advises the Thing to be done, is in a Manner guilty of the Fact it self; and being acquitted of that, he is discharged of all Guilt before the principal Fact committed.

But notwithstanding such Acquittal, he may be indicted as Accessary *after the Fact*, because such an Accessary cannot be guilty of committing the Fact it self, for that was done before he knew any Thing of it. *Kelynge 26.*

Indictment against an Accessary before the Fact.

Midd. ss. JUR. &c. quod cum R. C. nuper de Lond. Beoman, & J. J. nup. de Lond. pzed. Beoman, Deum pze oculis suis non habentes, sed instigatione Diabolica seduct. 11 die Maii Anno Regni, &c. apud London, viz. in Paroch. sancti Dunstani in occident' in warda de Faringdon extra, vi & armis, &c. felonice ac ex malitiis suis pzeogitatis in & super quendam Johan. Turner, adtunc & ibidem in pace Dei & dicti Dom' Regis existen' insultum & affraiam fecerunt & pzed R. C. quoddam tormentum (Angl' vocat' a Pistol) baloz' quinq; solis dozum adtunc & ibidem onerat' cum pulvere bombardico & glandine plumbea (Angl' charged with Gunpowder and Leaden Bullet) quod quidem tormentum idem R. C. in manu sua dextra adtunc & ibidem habuit & tenuit in & super pzesat' J. T. adtunc & ibidem felonice voluntarie & ex malitia sua pzeogitata sagittabit & exonerabit (Angl' did shoot and discharge) & pzed R. C. cum glandine plumbea pzed' e torment' pzed' adtunc & ibidem emiss. pzesat' J. T. in & super sinistram mamillam ipsius J. T. adtunc & ibidem felonice percussit dans eidem J. T. adtunc & ibidem cum glandine plumbea pzed' e torment' pzed' adtunc & ibidem emiss. in & super sinistram partem pectoris ipsius J. T. unam plagam mortalem latitudinis dimid' unius pollicis & pzeofunditatis quinq; pollicum de qua quidem plaga mortali pzed' J. T. apud London' pzed' in parochia & warda pzed'

Additidn.

7

pzed' * instanter obiit & pzed' J. J. felonice & ex malicia sua pze- * If the
cogitata adtunc & ibidem fuit pzelens auxilians assistens abet- Death is not
tans confortans & manutenens pzelat' R. C. ad felon' & mur- immediate-
dzum pzed' in forma pzed' felonice faciend' & perpetrand' & sic ly, then say,
pzed' R. C. & J. J. pzelat' Johan. Turner apud London' pzed' & languet
in paroch' & warda pzed' modo & forma pzed' felonice voluntarie dus vixit
& ex malitiis suis pzeogitatis interfecerunt & murdzaberunt usque ad
contra pacem dicti Domini Regis coron' & dignitat' suas. Ac primum
qđ quidam Robertus Creighton nuper de Paroch' &c. Armig' diem Junii,
Deum pze oculis suis non habens sed instigatione diabolica se- Anno, &c.
duct' ante feloniam & murdzum pzed' per pzelat' Robertum Car- quo qui-
liel 8 Jacobum Irwing modo & forma pzed' fact' & perpetrat' dem primo
viz. decimo die Maii Anno Regni, &c. pzed' Robertum Carliel die Junii,
apud paroch' pzed' in Com' pzed' ad feloniam & murdzum pzed' Anno, &c.
modo & forma pzed' faciend' & perpetrand' malitiose felonice pzed. J. J.
voluntarie & ex malitia sua pzeogitata incitabit mobit abetta- de plaga
bit consuluit & pzeurabit contra pacem dicti Domini Regis mortali
nunc coronam & dignitatem suas. pzed. obiit.

Upon this Indictment, Robert Creighton, Lord Sanchar, was The Acces-
convicted, and executed in the Palace-Yard, in the tenth Year sary before .
of King James the first.

Upon all these Indictments of Accessories before and after
the Fact, the Course is to set forth the Fact in the Indictment,
and conclude it, *contra pacem dicti Dom. Reg. coron. & dignitatem*
suas; and then if the Indictment be against an Accessary before Accessary
the Fact, you go on and say, Et quod quidam J. O. nuper de before the
H. in Com' pzed' Beoman, 23 die Augusti, Anno, &c. ac dixer- Fact.
is diebus & temporibus ante feloniam & murdzum (or as the
Fact is) pzed' in forma pzed' fact' & perpetrat' apud H. pzed'
in Com' pzed' malitiose & felonice consuluit mandavit pzeu-
rabit incitabit & abettabit pzed' (the Offender) ad pzed' felo-
niam & murdzum (or as the Fact is) voluntarie faciend' & per-
petrand' contra pacem, &c.

If after the Fact, then the Form is thus, viz.

Quod J. O. de H. in Com' pzed' Beoman, post murdzum &
feloniam pzed' in forma pzed' fact' sciens pzed' (the Offender)
feloniam & murdzum pzed' in forma pzed' fecisse & perpetrasse
ipsum (the Offender) apud H. pzed' in Com' pzed' vicesimo
quarto die Augusti, Anno Regni, &c. felonice receptabit aux-
iliabit & confortabit contra pacem, &c.

Accessaries
after the
Fact.

Addition.

BY the Statute of 1 H. 5. where Process of Outlawry lieth, 1 H. 5. c. 5.
the Condition and Dwelling of the Defendant must be in-
serted, or else the Outlawry is void.

But if there is no proper Addition of either Mystery or Place Cro. Eliz.
in an Indictment for *Encroaching on a Highway*, 'tis good, be- 148.
cause a *Distress* and not Process of Outlawry, lieth in that Case.

Addition.

But Surplusage of Addition doth no Hurt; the Omission is finable by the Chancellor, at Discretion, upon those who make Original Writs.

This Statute doth not extend to Informations.

Additions are either $\left\{ \begin{array}{l} \text{of Degrees or Estate,} \\ \text{of Mystery or Trade,} \\ \text{of the Place of Abode,} \end{array} \right.$

Degrees or Estate.

Archbishop.	Doctor.	Marquis.
Archdeacon.	Duke.	Parson.
Alderman.	Earl.	Serjeant at Law,
Bishop.	Esquire.	Viscount.
Baron.	Gentleman.	Widow.
Dean.	Knight.	

Before the making of this Statute, the Name of Dignity even at Common Law was to be added, because it was Parcel of the Name.

Cro. Eliz. 224. Garter, King at Arms, was indicted for striking in the Church-yard; And because he was not so named in the Indictment, it was quashed.

Dyer 27. B. So an Appeal of Murder was brought against *William Oldcastle*, of B. &c. Yeoman, and *M. O.* his Wife, *Spinster*; the Woman pleaded, That at the Time of the Writ, &c. she was a *Gentlewoman*, &c. The Plaintiff reply'd, That was not a good Addition.

Godb. 59. An Indictment against *D. Viduam* is not a good Addition, Cro. Eliz. 750. and yet if 'tis against *A.* the Wife, 'tis good,

Of Mystery or Trade.

Sid. 101. As to this Matter, 'tis sufficient if the Addition is in *English*.

Broker.	Mercer.
Grocer.	Merchant.
Hostler.	Spinster.
Husbandman,	Taylor.
Labourer.	Waterman, &c.

Of the Place of Abode.

And this Addition must be as the Defendant then is.

1. If the Town and Parish are both of one Name, then the Addition of either is good. So likewise if there be two Hamlets in the same Town.
2. If two Towns are in the same Parish, then the Defendant must be named of the Town only.
3. If he is of a Place known within the Town, then he must be named of the Town.
4. The Addition of Place may be such whereof the Defendant was once; but the County, Town or Hamlet, whereof he is, or was, must be set forth.

This

9

2 Leon. 183.
Cro. Eliz.
198, 583.
2 Leon. 200.

Affray.

What it is.

There must be a Stroke given or offered, or a Weapon drawn, or otherwise 'tis not an Affray. *H. P. C.* 135.

But yet a Challenge to fight by Word or Message, has been held an Affray; and *Anno 16 Car. 2.* one *Collins* was indicted for carrying a Challenge, knowing the Contents, and was found guilty, and fined 100*l.* and committed for a Month without Bail, &c. *Sid. 186.*

"Tis to be con- sider'd upon this Head. { What may be done, { 1. By the Constable.
2. By a Justice of Peace.
3. By a private Person.

(1.) By the Constable.

He may command the Affrayers to depart, and upon Refusal, may commit them; If they resist, he may call others to his Assistance, and may justify the Wounding, in such Case.

If it is a great and dangerous Affray, he may commit them till they find Sureties for the Peace.

If any Person is wounded, he may commit the Offender, or if he will, he may carry him before a Justice, who may commit him, if he will not give Security to appear at the next Sessions.

He may take them out of a Franchise in the same County: He may pursue them into another County; but then when taken, he must carry them before a Justice of the Peace, for he cannot commit out of the County.

If he is assaulted doing his Duty, or if the Affray be in his Presence, he may put them into the Stocks, till he can get Assistance to convey them to Gaol; or he may secure them according to the Quality of the Offenders, till he can bring them before a Justice, or to Prison, but not in his own House. *Dalt.* 38. *Lamb.* 133.

If he is hurt in the Affray, he may have an Action of Trespass. If

If there is Threatning to kill, or beat or hurt, tho' this is no Affray, yet he may apprehend the Persons, and carry them before a Justice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Justice, unless some Person is dangerously wounded.

If he neglect his Duty in not endeavouring to suppress an Affray, &c. 'tis presentable at Sessions, and he ought to be fined. *H. P. C. 135.*

(2.) By the Justice.

If the Affray is in his Presence, he may commit till they find Sureties.

If any Person is dangerously hurt, he may within a Year and a Day after the Hurting commit; and 'tis not Discretion to bail the Offender, tho' he may do it by Law.

He may, *ex Officio*, require those, who strike or threaten in his Presence, to find Sureties for their good Behaviour.

(3.) By a private Person.

Any Man may stay the Affrayers, who are about to assemble to break the Peace, till the Heat is over, and deliver them to the Constable.

Likewise any Man may apprehend an Offender who hath dangerously wounded another; and carry him before a Justice, or to a Gaol. *H. P. C. 135. Dalt. 35.*

An Indictment for an Affray generally.

Suffex ff. *Jur'*, &c. Quod T. P. de H. in Com. Suffex, *Taylor*, & J. S. de eadem *Faber ferrarius*, & J. O. de, &c. vi & armis, viz. Gladiis baculis & alijs bellicosis instrumentis 23 die Augusti, Anno Regni, &c. Modo guerrino apud H. pzed' in Com' pzed' arraiat' & illicite congregat' insultum & affraiam in vicem fecerunt in ferrozem & perturbationem diversorum subditorum dicti Domini Regis tunc ibid' existent' & in malum & perniciosum exemplum ligeorum dicti Regis, & contra pacem dicti Domini Regis eorum & dignitat' suas.

An Indictment for an Affray, and Beating another.

Suffex ff. *Jur'*. &c. quod J. O. de, &c. & J. S. de, &c. vi & armis, &c. 23 die Augusti, Anno Regni, &c. apud H. in Com' pzed' ex malitia sua pzetogitata in & super quendam R. D. de H. pzed' in Com' pzed' Beoman, in pace Dei & dicti Domini Regis tunc & ibidem existent' insultum & affraiam fecer' & ipsum R. D. cum quibusdam gladiis, quos ibidem J. O. & J. S. in manibus suis dexteris adtunc & ibidem separatim tenuer' super caput percusser' & dederunt eidem R. D. adtunc & ibidem diversas plagas que ipsum in magno periculo vite sue posuer' ita quod de vita ejus desperabatur in perniciosum exemplum aliorum Domini Regis subditorum ac contra pacem dicti Domini Regis eorum & dignitat' suas.

Alc.

Ale-houses.

THE true Use of Ale-houses and Inns was for the Relief Their Use, and Lodging of Travellers, and to supply the Wants of &c. those who are not able to provide great Quantities of Drink and Provision; and if any Ale-house-keeper or Inn-keeper refuse to lodge a Traveller, the Justice of Peace may compel him to it, or the Constable may present it as an Offence next Sessions, in Order to suppress it; or the Party may have an Action on the Case; but they cannot be compelled to sell Vi-ctuals, unless the Traveller tender Money, if required.

At Common Law, it was lawful for any Person to build an Inn for the Reception of Travellers, and without Licence from the Justices; but if the Inn-keeper sold Ale by Retail to any Person besides Travellers, and without a Licence, he was punishable. *Hutt. 99.*

Before the Statute 5 E. 6. it was lawful for any one to keep an Ale-house without a Licence; for it was a Means of Livelihood not prohibited by any Law; but if kept in a disorderly Manner, it was indictable as a Nuisance. *M. 13. W.*

As Ale-houses encreased, and were used to disorderly Purposes, so several Laws were made to suppress both the Numbers and Disorders.

These Laws generally concern, {
 1. Licensing.
 2. Disorders.
 3. Officers.

The first was made *Ann. 11 H. 7.* by which Power is given to two Justices to reject the Selling Ale. *11 H. 7. c. 1. 5 & 6 Ed. 6. cap. 29.*

There was no further Provision made in this Matter till about 56 Years afterwards, and then *Anno 5 & 6 Ed. 6.* a Law was made, That no Man should keep an Ale-house without being licensed, either in Sessions, or by two Justices (*Quorum unus.*) [By 6 G. cap. 21. Licenses must be Stamped, on Pain of 10 l.] *Inns are within this Statute as to Licensing.*

The Punishment was Commitment for three Days without Bail, not to be enlarged till the Offender entred into a Recognizance with two Sureties not to keep an Ale-house.

Which Recognizance being certified to the next Sessions, was to be a sufficient Conviction to fine him 20 s.

This Statute doth not extend to *Inns*, for these are for lodging Travellers; but if an *Inn* degenerate into an *Ale-house*, and the Master or Inn-keeper suffer Men to sit tippling there in a disorderly Manner, it shall be taken to be an Ale-house. *M. 13 W.*

By this Statute, Power was given to the Sessions, or the two Justices, to put down Ale-houses at Discretion, and to take Recognizances of Ale-house-keepers not to use unlawful Games, or keep Disorders in their Houses.

The

The Conviction upon this Statute ought to be by Way of Presentment or Indictment at the Sessions, and the two Justices ought not to commit till Conviction.

Palm. 388. Yet there are some Books which tell us, That an Indictment
2 Rol. Rep. will not lie for keeping an Ale-house without a License, be-
328. cause this Statute directs in what Manner the Offender shall be punished, viz. by committing him.

But because many Ale-house-keepers in those Days were not able to pay that Forfeiture, and it was seldom levied by reason of Poverty, which made People unwilling to present the Offenders; therefore a farther Punishment was added by the
3 Car. c. 3. Statute 3 Car. which not only inflicts the Forfeiture of 20 s. to the Use of the Poor, to be levied by the Constable or Churchwarden by Warrant of a Justice, before whom the Offence was proved, and which Distress may be sold three Days afterwards; but it provides, That if no Distress can be taken, the Justice shall deliver the Offender to the Constable to be whipped.

This Statute appoints the Conviction to be by Confession, View of the Justice, or Oath of two Witnesses.

For the second Offence committed to the House of Correction for a Month.

For the third, not to be enlarged but by Order of Sessions.

That the Justices must not make a Warrant for less than 20 s.

That Feme-Covert keeping an Ale-house without License, her Husband may be punished.

The Defendant was convicted upon the Statute 3 Car. for Selling Ale *sine aliqua licentia & contra formam Statuti*, and upon a Motion to quash this Conviction it was objected, that the Selling without License is punishable by former Statutes, particularly by the Statute 5 & 6 Ed. 6. by which 'tis enacted, That none should keep Ale-houses without License granted either in Sessions, or by two Justices; and it doth not appear but that the Defendant might be licensed by two Justices according to that Statute. *Sed per Curiam*, it being alledged, That he sold *sine aliqua Licentia quacunq;* that is sufficient. Trin. 9 Geo.

12 & 13
Will.

And by a late Statute Persons are prohibited to sell Brandy, or other distilled Liquors by Retail, to be drank in their Houses, without a Licence, in the same Manner as common Ale-house-keepers are licensed, and the Offender is made subject to the same Fines, Penalties and Forfeitures, as those are who sell Drinke without License.

Disorders
in suffering
Tippling
and Tip-
plers.

By the Statute 1 Jac. Ale-house-keepers, &c. are prohibited to suffer Townsmen to sit tippling, upon Forfeiture of 10 s. to the Poor where the Offence was committed. 1 Jac. cap. 9.

Constable or Church-warden may levy it by Distress, which may be sold after six Days; and if that cannot be had, the Offender is to be committed till paid.

A farther

Ale-houses.

13

A farther Punishment was added by 28 *Fac. cap. 7.* That the Offender should be disabled to keep an Ale-house within three Years afterwards.

By 4 *Fac. 5.* Townsmen sitting tippling, forfeit 3 s. 4 d. for the Use of the Poor, and being not able to pay it, shall be put in the Stocks four Hours; the Punishment must be within six Months.

Vintner keeping an Inn, and Inn-keeper, are within this Statute, *per 1 Car. 14.*

The Acts before-mentioned relate only to Townsmen sitting tippling.

But by 21 *Fac. cap. 7.* any Person, be his Habitation where it will, is prohibited to sit tippling; the Conviction by the former Laws was to be by two Witnesses, but by this Statute one Witness, or the Confession of the Party, shall be sufficient to prove the Breach of 1 *Fac. 9.* and 4 *Fac. 5.* and the Oath of the Party confessing shall be sufficient to convict any other offending at that Time; and a farther Punishment is added, *viz.* That the Offender shall be disabled to keep an Ale-house within three Years afterwards.

Upon this last Statute it hath been held, That if an Ale-house be suppressed, and shall afterwards within three Years be licensed by two other Justices out of Sessions, the two first Justices that suppressed it, may do so again, and commit the Party for disobeying their Order. Hut. 99.
8 Co. 32.

But there is some Difference in the Manner of suppressing an Ale-house, which is *licensed*, and which is *not*; for in the first Case the Proceedings must be upon the Recognizance, the Condition whereof must be broken; or it may be by Indictment, and then the Disorders must be proved, and such as make a Nuisance.

But the Sessions cannot suppress an Alehouse licensed by two Justices, unless 'tis for Disorder; for by the Statute 5 & 6 *Ed. 6.* they have no such Authority. 2 Salk. 470.

Where an Ale-house is kept *without Licence*, the Justices may suppress it at Discretion, and no Appeal lies for denying a Licence. *M. 13 W.*

The Statute 1 *Fac. cap. 9.* against suffering Tippling in their Houses, enacts, That the Offender may be bound in a Recognizance, to keep good Order, or may be committed as Ale-house-keepers without Licence, or indicted at Sessions.

An Inn-keeper not qualified, cannot be suppressed but by indictment for a common Nuisance at Sessions, and the Judgment must be to disable him to keep that very Inn; but it may be continued and kept as an Inn by another Person of good Repute. *Hutt. 100.*

For the better Direction of those who keep Ale-houses, King James Anno 16. published these Articles by his Proclamation; the Substance whereof is, *viz.*

1. That

Ale-houses.

1. That the Justices meet once a Year, either in *April* or *May*, and call before any two of them (*Quorum unus*) such Persons, who sell Ale, and inform themselves by Men of Credit what Persons are fit to keep Ale-houses, and then license them.

2. That in Licensing, they take a Recognizance with a Condition annexed (*ut postea*) and no other.

3. That the Person licensed to give such a Recognizance with Sureties, &c. for the Performance of the Condition to continue but for one Year, and whenever taken, to expire in *April* or *May* following; then to be renewed if Justices think fit.

4. The Justices may call the Clerks of the Peace, Town-Clerks or Deputies, to attend them at their Meetings, to take Recognizances, &c. and to enter them at Sessions, that the King may be entitled to the Forfeitures, and engross the Recognizance and Condition in Parchment, which is to be the Original, and give a Copy examined to the Ale-house-keepers.

5. They should keep a Book, in which the Names of all Ale-house-keepers should be kept, and they should attend the Justices with that Book.

6. They may take 18 *d.* for every Recognizance, and the Justice's Clerk 1 *s.*

7. If not licensed at the Meeting, he may have a Licence afterwards.

8. That none be licensed, who have not a convenient Lodging for a Traveller.

9. That Justices suffer none to sell, &c. without License, and that they proceed against Brewers at Quarter-Sessions for selling Beer or Ale to unlicensed Persons.

10. That the Clerks of the Peace in *Trinity* Term every Year carry a Brief of all Recognizances into the Office of the Patentes, that there be no Concealment.

11. Justices in Sessions to enquire of the due Execution of these Articles.

Places fit
for Ale-
houses.
Hutt. 100.

In any open Place in the Town, but not in By-Streets, or far distant from a Town.

For if built in any such Places, it may be presented, or indicted and suppressed, for 'tis a Common Nulance. So if the Inn-keeper or the House-keeper is a lewd Person, and if of ill Fame, his House may be suppressed.

Persons not
fit to keep
Ale-houses.

Persons of ill Fame and Conversation amongst their Neighbours, Constables, Bailiffs of Hundreds, and generally all Tradesmen who have good Trades, and sufficient for their Maintenance.

Disabled
for a Time.

Ale-house-keeper convicted according to the Statute of 21 *Jac.* is disabled for three Years.

Ale-

Ale-house-keeper continuing drinking in another Ale-house in the same Town where he dwelleth, being seen by the Justice, or proved by two Witnesses; or being drunk, and convicted upon an Indictment, or before the Justice.

Convicted and suppressed; if licensed again within three Years, the Licence is void, and he may be punished as if he had no Licence; and so 'tis if he was convicted without being suppressed.

Officers neglecting to levy the Penalties upon 1 *Fac.* 9. or if ^{Neglect by} Officers. no Distress can be taken, and they do not certify the same within twenty Days, they forfeit 40 s. to the Use of the Poor, to be levied by Distress by Warrant of one Justice; and if that cannot be had, then to be committed till paid.

The Conviction must be by one Witness upon Oath before one Justice.

Receiver of the Penalties shall be accomptable to succeeding Officers.

Then as to selling Ale to an unlicensed Ale-house-keeper, but only for the Expence of his own Family, the Forfeiture is 6 s. 8 d. per Barrel, to be divided between the Poor and Prosecutor; the Poor's Moiety is to be delivered to the Church-wardens, &c. to distribute. Prosecution must be at Sessions.

By 3 *Car.* 30. Officers neglecting to execute a Warrant of the Justice for the 20 s. for selling Ale without Licence, or refusing to whip the Offender, if no Distress can be taken, forfeits 40 s. to the Poor, or to be committed without Bail.

Ale and Beer ought to be sold by the Ale-Quart according to the Standard thereof, which is in the Custody of the Chamberlain of the Exchequer; but for several Years it hath been sold in *uncertain Measures*, and therefore by a late Act, 'tis enacted, That it shall be sold by the Ale-Quart or Pint, according to the said Standard, and in a Vessel stamp'd or mark'd to be of the Content thereof, either from the Exchequer, from the City of London, or from some City or Market-Town, where an Ale-Quart shall be made from the said Standard, and kept for that Purpose, under the Penalty of forfeiting, not exceeding 50 s. nor under 10 s. for every Offence.

If an Inn-keeper or Ale-house-keeper sells in a Vessel not stamp'd, or refuses in bringing in the Reckoning to give the particular Number of Quarts or Pints, he shall not detain any Goods if the Guest refuses to pay the Reckoning, but shall be left to his Action at Law.

The Collectors of the Excise must provide a full Ale-Quart and Pint for every Market-Town within their respective Divisions, or forfeit 5 l.

The Chief Officer of such Town shall cause the Pots to be marked with W. R. and a Crown, for which he is to take one Farthing

11 & 12
Will.
V. s. 1
Mark'd.

Ale-houses.

Farthing for each Vessel; if he neglect, or refuse so to do; he forfeits 5 l. and treble Damages shall be recovered by the Party grieved, and full Costs.

A Moiety of the Forfeiture goes to the Poor of the Parish where the Offence was committed, the other to the Prosecutor.

The Recovery is to be by Oath of one Witness before one or more Justices.

The Prosecution must be within thirty Days after the Offence, and the Penalty is to be levied by a Warrant from the Justice by Distress, &c.

If an Action is brought for putting this Act in Execution, it must be laid in its proper County where the Fault was done, and not elsewhere; and if the Plaintiff is cast, he must pay treble Costs.

The Justices must give this Act in Charge at every Sessions; but it shall not extend to Colleges or Halls in the Universities.

The Defendant was found guilty upon an Indictment for selling Ale without paying the Excise, but upon a Motion in Arrest of Judgment it was quashed, because it did not set forth to whom or at what Time it was to be paid, nor what Quantity of Ale he sold, so that a Conviction upon such an incertain Indictment cannot be pleaded to any other for the same Offence; besides in Criminal Cases the utmost Certainty is required, therefore the Quantity of the Offence ought to be set forth in this Indictment. *Mich. 1722. B. R. The King versus Gibbs.*

A Warrant to levy 10 s. for selling Ale in a Pot not marked.

To the Constable, &c.

Suffex, ss. **W** Hereas T. P. of, &c. Inn-keeper, was on the Day of the Date hereof duly convicted before me for selling Ale in his House in the Parish of, &c. on the 23d. Day of Febr. last, to J. O. of, &c. in a Vessel not made, sized and equalled according to the Standard for the Measure of Ale, remaining in the Custody of the Chamberlain of his Majesty's Exchequer, or in Proportion thereunto, not signed, stamped or marked, to contain an Ale-Quart according to the said Standard, by Reason whereof he hath forfeited 10 s. These are therefore to require you, to levy by Distress and Sale of the Goods of the said T. P. the aforesaid Sum of 10 s. and that you pay one Moiety thereof to the Church-wardens and Overseers of the Poor of the Parish of H. &c. where the said Offence was committed, for the Use of the Poor thereof, and the other Moiety to T. M. who prosecuted for the same. Given under my Hand and Seal, &c.

A Warrant against a Person for keeping an Ale-house without Licence.

Suffex, ff. **W** Hereas We whose Names are hereunto subscribed, two of his Majesty's Justices of the Peace for the County aforesaid, have been credibly informed, That T. P. of, &c. doth keep a common Ale-house without Licence, contrary to the Law in that Case made and provided: These are therefore to will and require you to bring the said T. P. before Us, or one of Us, or some Two or other of his Majesty's Justices of the Peace for this County, to be thence dealt withal according to Law: And hereof fail not. Given under our Hands and Seals.

A Warrant for summoning two Witnesses against an unlicensed Ale-house-keeper.

To the Constables, &c.

Suffex, ff. **W** Hereas Complaint hath been made unto me, That T. P. of, &c. doth of his own Authority and without any lawful Licence, keep a common Ale-house, and doth sell Ale, Beer, &c. in the Parish aforesaid; and whereas I am credibly informed, That J. O. of, &c. and F. O. of, &c. can justify the same: These are therefore to require you to give Notice unto the said J. O. and F. O. to come before me, &c. upon, &c. by ten of the Clock of the Forenoon of the same Day, then and there to testify what they know concerning the Premises; whereby they are not to fail at their Perils. Given, &c.

A Warrant and Commitment, upon the Stat. 5 Ed. 6. against an Ale-house-keeper discharged.

To the Constable of, &c. and to the Keeper of the Gaol for the said County, &c.

Suffex, ff. **W** Hereas T. P. of, &c. hath been duly discharged; from selling Ale or Beer in a common Ale-house, situate and being in the Parish of H. in the County aforesaid; notwithstanding which Discharge, he hath afterwards, contrary to the Commandment of the Justices of the Peace of the said County, used to sell Ale and Beer therein: These are therefore in his Majesty's Name, to command you the said Constable of, &c. that you apprehend the said T. P. and him safely convey to the * common Gaol at H. aforesaid, and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to receive the Body of the said T. P. into your Custody, and him safely to keep by the Space of three Days without Bail or Mainprize, and not discharge him afterwards, until he enter into a Recognizance with two Sureties, according to the Form of the Statute in that Case made, that he will not keep any common Ale-house without Licence, then the Form is, viz. Whereas

T. P. of, *Ale-house or Tippling-House, or use commonly selling of Ale and Beer.*
 &c. hath And hereof fail not. Given under our Hands and Seals, &c.
 this present
 Day been lawfully convicted, for that of his own Authority he did obstinately take up-
 on him to keep a common Ale-house in, &c. without the Admittance or Allowance of
 two Justices of the Peace for the County aforesaid,

The Form of the Recognizance.

Memozans quod 27 die Augusti Anno Regni, &c. T. P. de, &c. & J. O. & F. O. de, &c. venerunt coram nobis R. B. & W. N. Justiciariis dicti Domini Regis ad pacem in Com. p[re]s[ent]i conserband[um] Missi & recognoverunt se debere dicto, Domino Regi modo & forma sequenti viz. predicti T. P. in viginti libris & p[re]fat. J. O. & F. O. utriusque in decem libris legalis monete Angliæ de separabilibus bonis & catallis, terris, & tenementis suis, respectiue, leband[um] ad opus & usum dicti Domini Regis hered. & successorum suorum si defalt. fieret in perfozmation. conditionis infra scripte.

THE Condition of this Recognizance is such, That whereas the above-bounden T. P. hath been lawfully convicted before us R. B. and W. N. two of his Majesty's Justices of the Peace for the County aforesaid, for keeping of a common Ale-house in, &c. without being allowed thereunto in the open Sessions, or by two Justices of the Peace for the said County; for which said Offence the aforesaid T. P. was by us committed to the Common Gaol of the said County, there to remain for the Space of three Days, pursuant to the Statute in that Case made and provided, and is now discharged from the said Imprisonment: If therefore the said T. P. shall not keep any common Ale-house, Tippling-house, or commonly sell Ale or Beer from henceforth, without such Allowance as aforesaid, then this Recognizance to be void, or else, &c.

Note, This Recognizance must be certified at the next Quarter-Sessions, which Certificate is by this Statute made to be a Conviction of the Party offending, and an Authority to the Justices in Sessions to assess 20 s. as a Fine upon the Offender.

But this Law did not work the Reformation intended, because the Fine was seldom levied by reason of the Poverty of the Offenders; or if it was levied, the Person would sometimes run away, and leave a Charge upon the Parish, which was a Discouragement to the Prosecution.

Therefore by the Statute 3 Car. if they were not of Ability, a corporal Punishment was added, and an easy Way of Conviction, viz. by one Justice out of Sessions, and a more speedy Remedy for the Fine.

A Warrant against an Ale-house-keeper without License, upon the Statute of 3 Car. 2. cap. 3.

To the Constable of, &c. and to the Churchwardens of, &c.
in the County aforesaid.

Sussex, ff. **W**Hereas T. P. of, &c. Viſtualler, was this present 3 Car. 2. Day lawfully convicted before me, for keeping of a The first Conviction either upon common Ale-house in the Parish of, &c. not being thereunto lawfully licensed, according to the Form of the Statute in that case made and View, Con- provided, by reason whereof he hath forfeited to the Poor of the said tession, or Parish the Sum of 20 s. of lawful Money: These are therefore to Oath of two Wit- nesses be- fore one Justice. require you, or one of you, to levy the said Forfeiture, by distraining the Goods and Chattels of the said T. P. and that you detain the same for the Use aforesaid; And in Default of Payment of the said Sum of 20 s. within three Days after such Distress taken, that then you appraise and sell the same to satisfy the said Forfeiture. And if the said T. P. shall not have sufficient Goods upon which the said 20 s. may be levied as aforesaid, or shall not pay the same with- Where he is taken, or where Of- fence done: in six Days after the Date hereof, that then you the said Constable do openly whip, or cause the said T. P. to be whipped in the Parish of, &c. for the said Offence: And hereof fail not, &c.

The Second Conviction.

WHereas, &c. (as in the former Warrant, to the Word pro- vided.) And whereas the said T. P. hath been once law- fully convicted of the like Offence, and hath now offended the second Time: These are therefore to require you to apprehend the said T. P. and him safely to convey to the House of Correction, and to deliver him to the Keeper thereof, together with this Warrant: Com- manding you the said Keeper to receive the said T. P. into your Custody and House, and him there safely to keep for the Space of one Month, and to deal with him as an idle, lewd, and disorderly Person. And hereof fail not, &c.

The Third Conviction.

WHereas, &c. (as in the former Warrant, to the Word provi- ded. And whereas the said T. P. hath been twice lawfully convicted of the like Offences, and hath now again the third Time offended: These are therefore to require you to apprehend the said T. P. and to convey him to the House of Correction, and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keep- er to receive the said T. P. into your Custody and House afore- said, and him there safely to keep, until he shall be delivered from thence by the Order of the Justices in their general Quarter-Sessions for the County

Ale-houses.

County aforesaid ; and that, during all that Time, you deal with him as an idle, lewd, and disorderly Person. And hereof fail not, &c.

A Warrant to suppress an Ale-house.

To the Constable of the Hundred of, &c.

5 & 6 Ed. 6. Suffex, ff. **W** Hereas we are credibly informed upon the Complaint cap 25. of several Persons, That T. P. of, &c. doth suffer Two Justices, Quorum unus, rude and disorderly Persons to frequent his House in the Parish of, &c. being at this Time a common Ale-house, wherein they usually commit many great Disorders to the Disturbance of those who live near the said Place ; for which Reason we R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, one whereof is of the Quorum, do think it convenient to discharge and put away the common think fit, Selling of Ale and Beer, or other Liquors in the said House : These are therefore to require you forthwith to go to the said T. P. and to of Ale. If he charge him from henceforth not to sell or suffer to be sold any Beer or Ale, continue to or other Liquors in the said House, and that you also cause the Sign of sell afterwards 'tis the said House to be pulled down. And hereof fail not, &c.

a Contempt, and upon Proof, any Justice may bind him to his good Behaviour, and to appear at Sessions ; and if he cannot find Sureties, then to commit him.

A Licence to keep an Ale-house.

5 & 6 Ed. 6. Suffex, ff. **W** E whose Names are hereunto subscribed, being Two Justices, Quorum unus, of his Majesty's Justices of the Peace for the said County, do, according to the Form of the Statute in that Case made and provided, admit and allow T. P. of &c. Victualler, to keep a common Ale-house in that House where he now dwelleth, for and during the Space of one whole Year next ensuing the Date hereof, so as the said T. P. doth not use any unlawful Games, during the said Time, within the aforesaid House, and so as he keep good Order and Rule therein, so long as it shall continue a common Ale-house, as aforesaid. Given under our Hands and Seals, &c.

The Recognizance and Condition upon licensing such Ale-house.

Suffex, ff. Memorand', &c. as in the former Recognizance.

Principal in 20 l. and two Sureties in 10 l. each. 5 & 6 Ed. 6. cap. 25. **T** H E Condition of this Recognizance is such, That whereas the above-abounden T. P. is allowed by the Justices above-named to keep a common Ale-house in the House wherein he now dwelleth, &c. If therefore the said T. P. shall not, during the Continuance of the said Allowance or Licence, suffer any unlawful Games to be used in his House, but shall, during the said Time, use and maintain good Order and Rule therein, then this Recognizance shall be void, or otherwise shall remain in full Force and Virtue.

A War

Ale-houses.

21

A Warrant against an Ale-house-keeper for suffering Tippling in his House.

*To the Constable of, &c. and to the Church-wardens of the
Parish, of, &c.*

Suffex, ff. **W**Hereas it hath been duly proved before me this present Day, That T. P. of, &c. Victualler, did upon the 27th Day of August last past, permit and suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Ale-house of the said T. P. in the Parish aforesaid, contrary to the Form of the Statutes in that Case made and provided: These are therefore to require you the said Constable or Church-wardens to levy by Distress of the Goods and Chattels of the said T. P. the Sum of Ten Shillings for the said Offence, for the Use of the Poor of the said Parish, and to detain the said Goods for the Space of six Days next after such Distress taken, if the said Forfeiture of ten Shillings shall not be paid to you within that Time; and that afterwards you appraise and sell the said Goods to satisfy the said Forfeiture, rendring the Surplusage to the Owner. And hereof fail not, &c.

1 Ja. cap. 9.
21 Jac. c. 7.
One Justice,
View, Con-
fession, or
Oath of
two Wit-
nesses, and
Prosecu-
tion within
six Months;
but by 21.
Jac. c. 7. one
Witness is
sufficient.
1 Car. c. 4.
Vintners
Years.

are within this Act, and the Ale-house-keeper is disabled for three

A Warrant and Commitment for Want of Distress.

To the Constables of, &c. and to the Keeper of the County-Gaol there.

Suffex, ff. **W**Hereas upon the 10th Day of this Instant August it was duly * proved before me, That T. P. of, &c. in the County aforesaid, Victualler, did upon the 10th Day of July last past suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Ale-house of the said T. P. in, &c. contrary to the Form of the Statute in that Case made and provided. And whereas on the said 10th Day of August I did, by my Warrant lawfully executed, require the Constables and Churchwardens of the said Parish of, &c. or some of them, to levy the Sum of ten Shillings of lawful Money upon the Goods and Chattels of the said T. P. being forfeited by him, to the Use of the Poor of the said Parish, for the said Offence. And whereas I have been since credibly certified by, &c. Constable of, &c. That the said T. P. hath not sufficient Goods and Chattels, upon which any Distress may be taken to satisfy the said Forfeiture: These are therefore in his Majesty's Name, to command you the said Constable to take the said T. P. and to convey him safely to the Gaol aforesaid, and to deliver him there to the Keeper thereof, together with this Warrant: Commanding you also the said Keeper safely to keep and detain the aforesaid T. P. in your Custody, until the said ten Shillings shall be duly paid for the Use and Purpose aforesaid. Given under my Hand and Seal, &c.

* One Wit-
ness.

A Warrant against a Tippler to levy the 3 s. 4 d. &c.

To the Constables and Church-wardens of the Parish of, &c.

4 Jac. c. 5.
21 Jac. 7.
One Wit-
ness.
* Inn or
Vidual
ling-house,
as the Case
is.

Suffex, ff. **W**HEREAS it hath been duly proved before me, That T. P. of, &c. J. O. of, &c. and J. K. of, &c. being Inhabitants within your Parish of, &c. did on the 22d Day of this Instant August, remain and continue drinking and tippling in a * common Ale-house in, &c. by Reason whereof they have each of them forfeited three Shillings and four Pence to the Use of the Poor of the said Parish: These are therefore to require you the aforesaid Constables or Church-wardens, or some one of you, forthwith to levy by Distress and Sale of the respective Goods of the Persons above-named, the Sum of three Shillings and four Pence a-piece, if they shall neglect or refuse to pay the same upon Demand; and in Case of such Neglect or Refusal, and if no sufficient Distress can be found, on which to levy the said respective Forfeitures, that then you, or some of you, set the said Offenders in the Stocks, there to remain by the Space of four Hours; and for your so doing, this shall be your Warrant. Given under my Hand and Seal, &c.

Indictments.

2 Rol. Rep.
398.
Palm. 388.

TH E R E has been some Doubt, whether an Indictment will lie upon the Stat. of 5 & 6 Ed. 6. for keeping of an Ale-house without the Allowance of two Justices, because they have an express Power of committing before any formal Conviction, and have Authority to take Notice of the Offence, and to commit; and the Statute tells us how the Party shall be convicted after his Commitment, viz. by the two Justices, certifying the Recognizance to the next Sessions, which he is obliged to give before his Enlargement. 4 Mod. 145. This was the Opinion of Justice Haughton in Michaelmas Term, 21 Jac. but the later Opinions are, That where a Thing is prohibited by any Statute which is of a general Concern, and the Method of recovering the Penalties is in affirmative Words, that those shall not take away the general Way of proceeding by Indictment, unless it be by negative Words.

4 Mod. 144.

And this was the Opinion of Holt, Ch. Justice, that an Indictment being a summary Way of Proceeding was more beneficial for the Subject, and therefore it seems reasonable that such a Method should be pursued. 'Tis prohibited by the Statute 22 Car. 2. to travel with more than five Horses at Length: This is a new Law, and a new Offence, and yet an Indictment will lie against the Offender, though a particular Punishment is directed by the Statute.

A Man may be indicted for selling Ale in black Pots not mark'd, and tho' it doth not conclude *contra formam Statuti*, 'tis well enough; for selling less than Measure is an Offence at Common Law. 1 Vent. 13.

An Indictment for keeping of an Ale-house without Licence.

Villa & Burg. de Southwark, in Com. Surr. **M**emozand' quod ad General' Session' Pacis Domini Regis tent' 1 Saund 248 Sid. 409.
apud le Curthouse super Montem Sancte Margaretæ infra Villam & Burgum de Southwark in Com' Surr' pro Villa & Burgo predict' die Veneris scilicet octavo die Januarii, Anna Regni Domini nostri Caroli Secundi, Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, fidei Defensoris, &c. vicesimo, coram Will' Turner Milite, Basileo Cibit' Lond' Ric. Brown Milite & Baronetto, Johan' Frederick Mil' & Thoma Bludworth Mil' Aldermannis dict' Cibit' Justic' dicti Domini Regis ad pacem infra Burgum & Villam predict' in Com' predict' conserband' necnon ad divers' felonias transgr' & alia malefacta infra Villam & Burgum predict' in Com' predict' perpetrat' audiend' & terminand' assign' per sacram' (of the Jury) proborum & legalium hominum Ville & Burgi predict' in Comit' predict' adtunc & ibid' jurat' & onerat' ad inquirend' pro dicto Domino Rege, & pro * corpore Cibitat' predict' erisit presentat' quod Johannes Falkener de Parochia Sancti Salvatoris in Villa & Burgo de Southwark in Com' Surr' predict' Peoman, sexto die Decembris, Anno Regni Domini nostri Caroli Secundi Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis fidei Defensoris, &c. vicesimo, & continue postea usq; diem raptionis inquisitionis apud Paroch' predict' infra Villam & Burgum predict' in Com' predict' voluntarie obstinate & sine ulla licentia admissione + vel allocatione duorum Justiciar' dicti Domini Regis ad pacem infra Villam & Burgum predict' in Com' predict' conserband' assign' assumpsit super se custodire & custodivit unam communem popinam (Anglice a common Tippling-House) & in eadem popina ibid' per totum tempus supradict' communiter & publice vendidit & utterabit cervis. (Anglice Ale) & al' potum diversis ligeis & subditis dicti Domini Regis Jur' predict' ignot' contra formam Statut' in hujusmodi casu edit' & provis' ac contra pacem Domini Regis nunc coron' & dignitat' suas, &c.

* It should have been pro Villa & Burgo predict'.

+ The Allowance may be likewise at the Sessions.

This Indictment was not thus concluded, (viz. contrary to the Form of the Statute) but it was concluded as an Offence at Common Law, (in contemptum dicti Domini Regis nunc Legumque suarum ac contra pacem) and it being no Offence at Common Law to keep an Ale-house without Licence, it was for that Reason quash'd.

8 Rep. Ca-
ley's Case.

Inns were allowed for the Benefit of Travellers, who have certain Privileges whilst they are in their Journies, and are in a more peculiar Manner protected by the Law; 'tis for this Reason that the Inn-keeper shall answer for those Things which are stoln *infra Hospitium*, tho' not deliver'd to him to keep, and tho' he was not acquainted that the Guest brought the Goods to the Inn; for it shall be intended to be through his Negligence, or occasion'd by the Fault of him or his Servants.

So if he puts a Horse to Pasture without the Direction of his Guest, and the Horse is stoln, he must make Satisfaction.

But if a Neighbour, who is not a Traveller, lodges in an Inn and loseth his Goods, or if the Guest is robb'd by his own Servant in the Inn, or by any one who came thither with him, or by leaving his Goods in one Room, when the Inn-keeper desir'd him to leave them in another, in such Cases he shall not be answerable.

An Indictment upon the Statute of 4 Jacob. cap. 5. for Tippling, &c.

Suffex ff. **J**Uti, &c. quod T. P. de Parochia de, &c. Beoman, 28 die Augusti, Anno Regni, &c. remanebat & continuabat bibens & potans in hospit' J. T. *infra* Parochiam pred' in Com' pred' non erissen' adtunc, &c. contra formam Statut' in hujusmodi casu edit' & probis. & contra pacem dicti Dom' Regis coron' & dignitat' suas, &c.

For keeping of a disorderly House.

Suffex ff. **J**Uti, &c. quod T. P. de, &c. Wictualler, est homo male conversationis & Gubernationis & pacis Dom' Reg' perturbator, & quod idem T. P. apud H. in Com' pred' 22 die Augusti, Anno, &c. custodiebat tenebat & occupabat quandam popinam communem (Anglice, a common Tippling-House) & pred' 29 die Augusti Anno, &c. necnon diversis diebus & noctibus tam antea quam postea apud H. pred' in Com' pred' in eadem popina diversos homines male conversationis & suspect' ibidem bibentes jurantes & ludentes ad illicitos ludos, viz pictis chartis & aleis (Anglice Cards and Dice) omnibus horis tam noctis quam diei recepit & hospitat' est per que vicini sui & alii ligei populi dicti Dom' Reg' ibidem multipliciter verantur inquietantur & grabantur in malum exemplum aliorum dicti Dom' Regis subditorum & contra formam Statut' in hujusmodi casu edit' & probis & contra pacem dicti Dom' Regis nunc coron' & dignitat' suas, &c.

Apothecaries, See Juries,

By

Ale-houses.

25

By a late Statute, as to selling Ale and Beer within the 12 Geo. Bills of Mortality only, 'tis enacted, That after 24 June 1726, not less than one Pound, nor more than six Pounds, shall be paid yearly by every Victualler and Retailer of Beer and Ale, within the Bills of Mortality.

That Commissioners shall be appointed by the King or the Treasury, to manage the said Duty, who may substitute such Officers as they shall think necessary, which Commissioners or the major Part of them, shall grant Permissions for retailing Beer and Ale.

That no Victualler, &c. within the Bills of Mortality, shall sell Beer or Ale without a Permission first obtained, under the Hands and Seals of such Commissioners, or the major Part of them; and in order to obtain such Permission, the Victuallers, &c. shall every Year, within 20 Days after the 24th of June, or some Person for them, make Application to the Commissioners, &c. and then compound with them for a Sum of Money, to be paid for one Year; one Moiety of which Composition-Money shall be paid down at the Signing of the Permission, and the other Moiety at the End of six Months next ensuing, which Permissions at the Expiration of one Year, shall be sent to the Commissioners to be cancell'd, and new Compositions made, and the like Permissions granted for the next Year.

Proviso, That an Inn-keeper, Victualler, &c. leaving off retailing Ale and Beer, and discharging all Composition-Money, and giving Notice thereof at the Office, &c. such Permission and Composition shall cease.

The Commissioners, &c. shall make Compositions, according to the best Intelligence they can get of the Trade of the Compounder, and shall demand no more for each Permission, which shall be yearly accounted and paid with the other Money, to be rais'd by Compositions.

That no Victualler, &c. shall send Beer or Ale out of their Houses to drink, in any Pot, Cup or Vessel, less than a Gallon, in Ale Measure; but Beer or Ale may be drunk at the Door of the House, or in any Out-house, Shed or Arbour, Garden or Yard, belonging to the House, in less Measures.

Victuallers, &c. neglecting or refusing to take out a Permission, or to pay the Composition-Money, as it shall become due, shall for every Neglect, &c. forfeit 20*l.* to be levied by the Laws of Excise.

That the Commissioners shall have the same Power as the Commissioners of Excise.

Proviso, This Statute shall not alter or diminish any Power of the Justices of the Peace, in licensing or regulating Victuallers.

Any Person sued for putting this Act in Execution, may plead the general Issue, and give the Statute and the Special Matter

in Evidence ; and if the Plaintiff be Nonsuit, or the Defendant obtain Judgment on a Demurrer or a Verdict, he shall have treble Costs.

Appeals.

TH O' nothing can be said under this Head which relates to the Office of a Justice of Peace, yet some Knowledge of the Law in this Matter may be requisite to him. Appeals may be brought either by Writ or Bill. It was the Opinion of Justice *Fitzherbert*, That the Justice of Peace might receive an Appeal by Bill, because by the Statute they had Power to hear and determine Felonies ; but that is at the Suit of the King, and not of the Party : And yet this is made a *Quare* by my Lord *Hale*, in his *Pleas of the Crown*.

34 Ed. 3.

c. 2.

2 Inst. 420.

H.P.C. 179.

Where the Appeal is brought by *Writ*, there must be fifteen Days between the *Teste* and the *Retorn* ; but if it should not be so, the Fault is cured by the Appearance of the Defendant and his Pleading in *Chief* : Now the Reason of the fifteen Days between the *Teste* and *Retorn* of Originals is, because the Defendant may have Time to appear in Person at *Westminster*, from any Part of *England*, by computing twenty Miles to a Day's Journey ; for 'tis necessary he should appear in Person, because the Appellant must count *in propria Persona*, and not by Attorney ; and if he is not present, he may be demanded and nonsuited ; but such Nonsuit is not peremptory, because 'tis before Appearance. P. 4. *Anna*.

Appeals are of three Sorts, *viz.*

1. By the Heir male, for the Death of his Ancestor.
2. By the Wife, for the Death of her Husband.
3. By the Appellants, for Wrong done to themselves, as Robbery, &c.

These Appeals are not so common as Indictments, because the Prosecution is not only more chargeable, but 'tis the most nice Suit in the Law, for the Omission of any Word which is material will abate the Writ.

1 And. 41.

See in Murder.

As for Example : By the Statute 24 H. 8. cap. 5. 'tis enacted, That if a Person is appealed for the Death of another, *attempting to murder* the Appellee, and 'tis so found by Verdict, he shall forfeit neither Lands or Goods ; the Jury found that the Person slain assaulted the Appellee near the Highway, but omitted to say, *Ad ipsum murderandum*, and that he kill'd him in his own Defence ; and because these Words were left out, the Appellee had Judgment to forfeit his Goods.

Appeals.

27

So by *mistaking the Place*, as if the Wound is alledged to be Cro. Eliz. given at *W.* of which he languish'd at *L.* and there died; and 196. so at *W.* aforesaid the Appellee *modo & forma* the other *murdravit*; this is ill, because 'tis set forth that the Man died at *L.* and yet the Murder is alledged to be at *W.* which is very inconsistent, for 'tis not Felony till his Death.

So where two were indicted as *Principals*, and a Man and his Wife as *Accessaries* to a Murder, and all found guilty, and the Principals and the Husband executed, and the Wife pardon'd; it was a Question whether an Appeal brought against her should abate, because there was no *Principal* named in it, nor was there any living. Dyer 133. a.

Where 'tis brought by a Brother and Heir, it shall abate if he is so named after the *alias dictus*, and not in the Substance of the Writ. Dyer 50 b.

The Process of *Capias* must be awarded the same Day of the Return of the Writ of Appeal, and it will be a Discontinuance if dated but a Day afterwards, and aided by no Statute, nor by the Appearance of the Party himself. 2 Cro. 283. Yelv. 204. Bulst. 141.

This varies from all other Proceedings, for a Fault in it can never be amended; and though regularly after a Nonsuit you may bring the like Action again, yet a Nonsuit in any Appeal for Felony (but it must be after Appearance in proper Person, *Sid. 32.*) is peremptory, because 'tis *in favorem vite*. Inst. 139. Yet the Party may be afterwards indicted.

And the Statute 5 G. by which Writs of Error were made amendable, doth not extend to any Appeal of Felony or Murder, nor to any Process upon an Indictment or Information. Cro. Eliz. 460. 5 G. c. 13.

In an Appeal for Murder the Declaration was, That at *L. in Com' S. venerunt prad' Johannes, & quidem D. S. modo defunct'*: Now if *quidem* should be admitted to be false *Latin*, it should not abate the Declaration, for it did not at Common Law.

As to Appeals in Murder, 'tis to be observ'd, that if there is a nearer Heir to the Person killed, the next Heir Male cannot bring an Appeal; as if he that was killed had only a Daughter, his Brother shall not have an Appeal.

The Count in an Appeal must contain,

The Fact.	}	As to the Fact,	}	1. In what Part of the Body.
		four Things are		2. Of what Length and Depth.
The Year.	}	necessary;	}	3. That he dy'd of the Wound.
				4. Within the Year and a Day.

The Day. Not necessary in an Indictment.

The Hour. It may be *circa Horam ante Meridiem*.

The Year of the King. That the Fact may appear to be done within the Year.

The Vill where it was done. And with what Weapon.

Circiter
peñus, not
good in an
Appeal.

In

Appeals.

In the Case of *Wilson and Laws* it was adjudged, That tho' the Fact was laid to be done in a *Parish*, 'tis well enough, for that shall be intended a *Vill*; but *Anno 11 Anna*, in the Case of *Widdrington* versus *Charlton*, it was adjudged to the Contrary, because 'tis expressly requir'd by the Statute of *Glocester*, that the Fact shall be alledged to be done in a *Vill*.

The *Wife* brought an Appeal for the Death of the *Husband*, against *W. W.* late of the *Parish* of *St. James Westminster*. The Appellee in *propria Persona* crav'd Oyer of the Writ and Return, and then *per W. B. Attornatum suum* pleaded in Abatement, that there is a *Parish* named *St. James within the Liberty of Westminster*, but no *Parish* nam'd *St. James Westminster only*; and upon a Demurrer to this Plea the Appellee had Judgment, because by the Demurrer the Appellant had confess'd that there was no such *Parish*, therefore the Appellee's Plea is good. 'Tis true, it ought not to have been receiv'd, because pleaded *per Attornatum*, but it being receiv'd, 'tis void, and by Consequence the Cause being adjourn'd to the next Term, it was discontinued by that Adjournment. 1 *Salk.* 59.

Dyer 38. a. Some Questions have been made where 'tis proper to bring an Appeal: As for Instance, If the Principals are attainted in *Wiltshire*, and an Appeal is brought in the same County against the Accessaries, setting forth, That they *apud London* did incite, &c. the Principals: This Appeal is not well brought in *Wiltshire*, because the Procuring and Inciting was a Personal Tort done in *London*, and the Appeal ought to have been brought there.

4 *Leon.* 16. And as the Place, so likewise the Time when to be brought, is material; and as to that, there is some Difference in the Crimes; for if 'tis an Appeal for Murder, it must be brought within a Year and a Day after the Fact; if for Robbery, it may be twenty Years after.

So likewise it hath been a Question, where a Man is indicted for Murder, and convicted of Manslaughter, and an Appeal brought, Whether the Court may proceed upon such Conviction, pending the Appeal.

And as to this Matter, a late Case happen'd, in which the Law is now settled, and it was thus:

Mr. *Lisle* was indicted at the Assizes held at *Carlisle* for the Murder of one *Armstrong*, and was found guilty of Manslaughter: An Appeal was immediately brought; which was receiv'd, but before it was arraign'd he pray'd his Clergy: Then the Appeal was read in Court, to which *Lisle* appearing, did not plead to it, but desir'd to be bail'd; which not being granted, he was remanded to Prison.

Afterwards these Proceedings were return'd by *Certiorari* into *B. R.* and the Appellee being brought up by *Habeas Corpus*, was committed to the *Marshalsea*: And at another Day appearing in Court,

(1.) The first Question was, Whether he might be bailed before he had his Clergy? And it was adjudg'd that he might.

(2.) The next Question was, Whether the Court might proceed to Judgment upon the Conviction of Manslaughter, tho' there was an Appeal then depending? And adjudg'd likewise that they might, because neither the Appellant or Appellee had any Day in Court; for the Appeal being commenc'd at the Assizes, was determin'd with that Session, and cannot be continued from one Gaol-Delivery to another.

'Tis true, 'tis not wholly discontinued, for it being remov'd into B. R. and the Appellee being in *Custodia Marescalli*, he may move the Court that he may be arraign'd; or if he was not in Custody, then the Appellant might take out Process against him; but he cannot proceed upon an Appeal thus commenc'd, unless 'tis reviv'd; which not being done, the Court may proceed to Judgment.

In former Times, there could be no Proceeding on an Indictment for Murder till the Year and a Day was expired, in which Time the Party might bring an Appeal; but it seems this was not in *Provisiōe Legis*, but at the Discretion of the Justices, who apprehended that the Person most nearly related would be most zealous in prosecuting the Criminal, in order to revenge the Injury, notwithstanding any Pardon which he might obtain upon a Conviction on an Indictment, which he could not do on an Appeal.

'Tis agreed, That if an Offender was indicted, and at the same Time, and before the same Judge, an Appeal was *freshly prosecuted*, the Appeal ought to be preferr'd; because if it was for a Robbery, the Appellant might have Restitution, which he could not have upon an Indictment, before the Statute of 21 H. 8. and if it was for a Murder, no Pardon could prevent the Punishment.

But then, by the Common Law, the Appeal must be *freshly pursued*. 'Tis true, 'tis very uncertain what is the legal Sense of a *fresh Suit*, though we are told, that upon great Consideration of all the Books 'tis settled, but in a very odd Manner, *viz.* That 'tis not capable of any Definition, but must be determin'd by the Discretion of the Court.

Now 'tis generally known, that some Men can discern better and further than others; so that the Matter being left at this Uncertainty, and because the Defendant might not take any Advantage by Pleading in Abatement to the Appeal, that there was no *fresh Suit* prosecuted, 'tis probable that might be the Occasion for making the Statute of *Glocester, cap. 9.* by which 'tis enacted, That no Default shall be in the Appellant, so as he brings his Appeal within a Year.

So that upon the whole Matter it appears, that there ought to be no Delay in prosecuting an Appeal; and because it often happen'd otherwise, and sometimes Appeals were brought on
Pur.

Purpose to hinder the Prosecution upon the Indictment, sometimes an Agreement was made with the Appellant, so that at the End of the Year all was forgotten: Therefore by the Statute 3 H. 7. cap. 1. an Indictment may be tried without staying for the Appeal. But notwithstanding the Proceedings on such Indictment, and any Attainder or Acquittal therein, the Benefit of the Appeal is saved to the Party, if the Benefit of the Clergy was not had; which shews, That before that Statute, if the Clergy was not had, it would be a good Bar to the Appeal: So 'tis unreasonable that the Appeal should interpose between the Conviction and the Judgment, to hinder Execution; for if that should be admitted, then an Appeal might obstruct even upon a Conviction of Murder, as well as Manslaughter.

Afterwards Mr. *Lisle* being willing to be discharg'd from this Appeal, he brought a *Sci' fa'* against the Appellant to compel him to prosecute it; who appearing, Mr. *Lisle* pleaded the Indictment and Conviction of Manslaughter, and that no Judgment was given thereon; and that at the Time of the Conviction, he was, and yet is a Clerk, and pray'd his Clergy at that Time, and offer'd to read as a Clerk, if the Court would have admitted him: And that afterwards, being demanded by the Court why Judgment should not pass against him, he pray'd his Clergy, which was allowed, and that he read as a Clerk, and was burnt, &c. And as to the Felony and Murder, he pleaded not guilty, to which there was a trifling Replication, and to that a Demurrer. But the Plea was held good to bar the Appeal.

In what
County it
must be
brought.
Cro. Car.
247.
By the
Wife.
2 Inst. 68.
Jones 255.

If a Stroke be in one County, and Death in another, the Appeal may be brought in the County where the Man died: This was a Doubt at Common Law, but remedied by the Statute of 2 & 3 Ed. 6. But it was never yet doubted whether a Fact in one Country might be try'd in another; for 'tis plain it cannot; and therefore an Appeal of Murder committed in *Montgomery* was try'd by a Jury in *Shropshire*, and for this Cause it was held ill.

'Tis true, the Statute 26 H. 8. cap. 6. allows, that a Man may be indicted in one County for a Fact committed in another, but it doth not mention Appeals.

At Common Law, a Woman might have an Appeal for the Death of her Ancestor; but by *Magna Charta* 'tis enacted, *Quod nullus capiatur aut imprisonetur propter appellum fœmina de morte alterius quam viri sui*; and therefore *ne unques accouple*, &c. is a good Plea in Bar to such an Appeal: Yet if the Person slain had no Heir of his Father's Side, his Uncle of the Mother's Side might have an Appeal; and in such Case he must of Necessity make his Conveyance by a Woman.

She must continue to be *fœmina viri sui*, for if she marry before, or pending the Appeal, 'tis gone; if after Judgment in an Appeal, she cannot have Execution.

Appeal of
Robbery.
3 Inst. 242.

She

She might have an Appeal of Robbery, for that is a Wrong done to her self.

At the Common Law, this Appeal was the only Way for the Party robb'd to have Restitution of the Goods taken from him, for he could not have them restor'd upon an Attainder or an Indictment, because that was at the Suit of the King.

And even in this Case the Law was very defective; for if a Robbery was committed by one Man upon three, and they all bring several Appeals against him, and he is attainted and executed at the Suit of one of the Appellants, the other two cannot be restored to their Goods, because 'tis impossible that the Robber can now be attainted at their Suit: And this was the Occasion of making the Statute of 21 H. 8. to remedy that Defect, viz. That the Robber being found guilty, the Justices have Power to award Restitution of the Goods taken away; as if the Felon was attainted at the Suit of the Party in an Appeal within a Year and a Day after the Death or Fa&t, the Year to be accounted according to the Calendar Months, and till that was expired the King could not bring an Indictment; but yet if an Appeal is brought for Murder, &c. and pending the Suit, and after the Year expired, one becomes Accessary, &c. the Party may have an Appeal against the Accessary after the Year wherein the Death happened; but it must be within the Year wherein the new Felony (as Accessary) was committed.

They must be joined in an Appeal, and yet if the Principal be pardoned before Judgment, or hath his Clergy, the Accessary cannot be tried, because before Judgment given it doth not judicially appear that there was any Principal, and where there is no Principal, there cannot be an Accessary; but if the Principal be pardoned after Attainder, 'tis otherwise.

If an Appeal of Felony is against Principal and Accessary, and both plead the general Issue, and the Principal is acquitted upon his Trial, this is likewise an Acquittal in Law of the Accessary, and he shall have Damages against the Appellant.

But in an Appeal as Accessary to two Principals, where one of them is acquitted, the Appellee shall not have Damages till the other is also acquitted.

So if an Appeal of Murder is brought against one *simul cum* five other Persons as Principals, and 'tis found that the one did the Fa&t in his own Defence, this is an Acquittal of all; but yet that one cannot have Damages.

If an Appeal is brought after an Indictment found, it cannot be said malicious, because it may be reasonably intended that the Indictment thus found was the Cause of the Appeal.

But if the Indictment should prove insufficient, then 'tis in Judgment of Law as no Indictment, and an Appeal afterwards brought may be malicious.

A Release of all Actions Real and Personal will not discharge an Appeal of Felony, because 'tis an Action of a higher Nature, Release

Straund.
167. b.
21 H. 8.
cap. 11.
When it
must be
brought.
2 Inst. 320.

Principals
and Acces-
saries.
4 Rep. 43. B.
Moor 461.
Cro. El.
540.

Appeals.

Nature, and doth not fall under the Notion of a Personalty; 'tis a Criminal Action, and must be released by the Word *Appeal*, or by other general Words, viz. all Actions Criminal or Mortal, &c.

But a Release of all Personal Actions is a good Bar to an Appeal of *Maibem*, because Damages are only to be recovered therein.

Appeal of *Maibem*. An Attorney cannot be made in this Appeal, because the Defendant hath a Right by Law to demand *Oyer* of the *Maibem*; and though a Man may be so wounded that he cannot appear in Person, yet that must not change the Law.

Pleas in Appeal. Upon Not guilty pleaded, the Appellee cannot give in Evidence that he did it in his own Defence, but he ought to plead it specially by way of Justification.

4 Rep. 43. 'Tis a good Bar to plead a Recovery in Trespass, &c. and to aver that the Wounding in the Appeal of *Maibem*, and the *Maibem* in the Trespass, were all one.

Sid. 108. But this Appeal is seldom brought; the usual Way is an Hard. 408. Action of Trespass for an Assault, Battery and Maiming, &c. and in this Action the Court may encrease the Damages upon the View of the *Maibem* and Affidavits of the Expences; but then the Word *Maibemavit* must be in the Declaration, or the particular Manner of the *Maibem* must be expressed, which is the better Way of declaring; for otherwise the Court cannot encrease the Damages, unless the Judge, before whom it was tried, will certify the Particulars; but he must be a Judge of the same Court.

Dyer 348.B. *Misnomer* is a good Plea in an Appeal.

3 Leon. A Woman brought an Appeal for the Death of her Husband; 268. Cro. the Appellee pleaded, That she was never married, and pleaded Eliz. 223, over to the Felony and Murder, Not Guilty; the Woman 224. replied, That she was lawfully married, but did not reply to the Felony: And this was adjudged no Discontinuance, because the first Part of the Plea was not triable at Common Law, for if it had, she must have replied to both Parts.

4 Rep. 45. b. In an Appeal of Murder, the Jury may find the Defendant Cro. Eliz. guilty of *Manslaughter*, or not, as they shall see Cause, but if 276, 296. they find him guilty of *Manslaughter*, that shall be as a good Plea to an Indictment for the same Murder, viz. That in the Appeal he was found not guilty of Murder, but guilty of *Manslaughter*.

If a Murder is committed in one of the *Cinque-Ports*, and the Appeal is brought in *Kent*, 'tis no good Plea to say the Murder was done in *Sandwich*, *ubi breve Domini Regis non currit*, because those Privileges which they have are for their Ease and Benefit. Now 'tis plain they have no Power over one out of their Jurisdiction; so that if a Murder is committed in *Sandwich*, and the Offender escapes into *Kent*, which he easily may, those of the *Cinque-Port* cannot try him for want of Jurisdiction; and

Yelv. 12.

and if he should not be tried by the Court of B. R. because the Murder was done there, then the Murderer must go unpunished, which is such an Absurdity as the Law will not endure.

In an Appeal of Murder for the Death of her Husband against the Defendant *nuper de Parochia Sancti Jacobi Westm. &c.* he pleaded in Abatement that there is a Parish named *St. James within the Liberty of Westminster*, but no Parish named *St. James Westminster* only; and upon Demurrer this was held a good Plea. 3 & 4 *Fac.*

In an Appeal for Murder, the Jury may find the Appellee not guilty generally, as they did in **Wrote and Wigg's Case*; or they may find him not guilty of Murder, and guilty of Man-slaughter, as they did in the Case of † *Penryn and Corbet*; though such a Finding is more than needful; and therefore it seems to be no good Bar to an Indictment afterwards for the same Fact.

It has been a Doubt whether upon such a Verdict and Clergy allowed, the King can pardon the Burning in the Hand; it was made a *Quare* in *Dyer*, Anno 9 *Eliz.* in *Musgrave's Case*.

About 29 Years afterwards the same Matter came in Question again, in the aforesaid Case between *Penryn* and *Corbet*; and the Argument then used why the King could not pardon it, was, because it was at the Suit of the Party, tho' it was not denied but that the Fact, of which the Appellee was found guilty, was for the King; and my Lord Chief Justice *Popham*, who had seen the Roll in *Musgrave's Case*, cited that for an Authority, that the Queen could not pardon it: But that Cause was ended by Composition.

Three Years afterwards this very Question came in Debate again between *Shuckborough* and *Biggin*, upon the Appeal of the Wife for the Death of her Husband; the Pleadings are enter'd at large in my Lord *Coke's Entries*, fol. 57. but no Judgment, for that Case was likewise ended by Composition, the Court being equally divided.

But my Lord *Coke*, who has reported the last mentioned Case, tells us, That upon Conferences had with other Judges, Judgment was given, That the Queen might pardon the Burning in an Appeal; and the Reason he gives is, because 'tis no Part of the Judgment or Punishment, but only a Mark to signify that he shall not have his Clergy again; and this was likewise the Opinion of my Lord *Hobart*, in his Argument between *Searl* and *Williams*: So that this Point is now settled.

The *Teste* of the *Capias* must bear Date the same Day with the Return of the Writ of Appeal, and so every new Process must be dated on that very Day the other was determined; for the Intermission of a Day will make a Discontinuance, because by Law the Appellant must prosecute the Defendant *recenter* & *instanter*, so that the Appeal must be pursued *de die in diem*.

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Apples and Pears.

In an Appeal of Murder by Writ, there were but eleven ^{1 Salk. 63.} Days between the *Teste* and Return, the Defendant pleaded a Conviction of Manslaughter, and Clergy had, but afterwards would have taken Advantage of this Defect, for that there ought to be 15 Days between the *Teste* and Return; but adjudged that this is cured by his appearing and pleading, for the Reason of the 15 Days is because the Defendant may have sufficient Time to come into Court, computing 20 Miles to a Day's Journey, within which Time he may come from the most remote Parts of *England*, therefore he should have pleaded this Matter specially.

If there are several Defendants, and all outlawed, and then all of them join in a Writ of Error, and one alone appears, the Outlawry shall not be reversed, although there is a plain and manifest Error in the Proceedings, without the Appearance of all; nor then neither, until a *Scire facias* issued to the Lords mediate and immediate.

The Defendants cannot imparl, but the Court may be adjourned by a *Dies datus* until such a Day, and when they appear, and Issue is joined, the Appellant must pray a *Venire Facias* immediately.

If the Appeal is removed by *Certiorari*, and the Plaintiff will not proceed, the Defendant may have a *Scire facias*, and upon *Nihil* returned, or a *Scire feci* and Default, the Defendant is discharged.

Witnesses,
Sid. 310.

Evidence given for or against the Defendant in an *Indictment* is no Evidence in an *Appeal*; and therefore the Court would not suffer the Witnesses for the Appellee to depose what was given in Evidence upon an *Indictment* by a Witness then dead; but this was contrary to the Opinion of Justice *Twyssden*.

By the ancient *Saxon* Laws, when a Man was killed, the Offender was to make some Compensation in Money to the Relations of the Person killed, according to his Quality; and this was called *Wiregeld*, which the King could not pardon: From whence 'tis the Opinion of some Men, that Appeals in Cases of Murder are derived to the Wife or Heir at this Day. And so much I thought necessary to write concerning Appeals.

Apples and Pears.

IF sold by Water-measure, it shall be round, and 18 Inches and an half Diameter within the Hoop; and eight Inches deep, and no more; and so in Proportion for a greater or lesser Measure, and heaped.

He that buys or sells by other Measure, forfeits for every Offence 10 s. one half to the Informer, and the other to the Poor of the Parish where the Offence is committed.

Conviction must be by the Oath of one Witness, before one Justice, Mayor, &c. and the Penalty is to be levied by a War-
Tant.

The

Apples and Pears.

15

The Form of the Warrant.

To the Constable and Headborough of the Hundred of, &c.

W Hereas T. P. hath been duly convicted before me for selling ^{1 Anne.} Apples at L. on the 22d. Day of January last past, in a Measure not round, nor 18 Inches and an Half Diameter within the Hoop, nor eight Inches deep, neither were the said Apples heaped in the Measure out of which they were sold, so that he hath forfeited 10s. These are therefore to require you forthwith to lety the said 10s. on the Goods and Chattels of the said T. P. by Distress and Sale thereof, rendring to him the Overplus; and that you pay a Moiety thereof to J. O. who first informed me of the said Sale, and the other Moiety to the Churchwardens and Overseers of the Poor of the said Parish of L. where the said Offence was committed, for the Use of the Poor thereof. And hereof fail not. Given under my Hand and Seal, &c.

Apprentices.

THE Statutes relating to Apprentices, Labourers, Masters and Servants, may be reduced, viz.

Of these, there are three Sorts:

Apprentices, { To Trades. } 5 Eliz. cap. 4.
 { To Husbandry. }
 { Poor Apprentices. } 43 Eliz. cap. 2.

Concerning Apprentices to Trades, these Things may be observed upon the Statute 5 Eliz. cap. 4. Apprentices to Trades.

Apprentices to Trades. { 1. Who may take them, who not.
 2. Who shall be compelled to serve in Trades.
 3. The Manner of punishing or discharging Apprentices.
 4. How long they must serve.

1. Every House-keeper in any City, or Town Corporate, of ^{Who may} the Age of 24 Years, and using any Art or Mystery there, may take ^{take them} any Apprentice; whose Term ought not to expire till he is 24 Years old.

D 2

Artificers

Apprentices.

Artificers in Market-Towns not Corporate, and who are Housholders, and of the Age of 24 Years, may take other Artificers Children Apprentices.

These Tradesmen following may take Apprentices, though the Parents of such Apprentices have no Lands, viz.

Bricklayers.	Linen-Weavers.	Smiths.
Brickmakers.	Masons rough.	Shinglers.
Carpenters.	Millwrights.	Thatchers.
Coopers.	Millers.	Tilers.
Earthen Potters.	Plasterers.	Tilemakers.
Fullers.	Ploughwrights.	Turners.
Helliers.	Sawyers.	Woollen-Weavers.
Lime-burners.	Slaters.	Wood-burners.

*Who may
not take
them.*

These Tradesmen following shall not take Apprentices but their own Children, or the Children of such whose Parents have 40 s. *per Annum*, if they live in Corporate Towns, or 3 l. *per Annum* in Lands, if they live in Market-Towns not Corporate; the Ability of the Parents is to be certified, under the Hands and Seals of three Justices where the Land lieth, to the Head-Officer of the Place.

Clothiers dwelling in Corporate Towns.

Drapers.	Goldsmiths.	Mercers.
Embroiderers.	Ironmongers.	Merchants.

And by a subsequent Statute, a Hatmaker is not to have 8 Eliz. c.2. above two Apprentices at one Time, upon Pain of being committed for a Month.

Woollen-Cloth Workers (except those who live in Cumberland, Lancaster, Wales, Westmorland or Cities, Corporations or Market-Towns) shall not take Apprentices, but their own Children; nor teach their Art to any, but to those whose Parents have a Freehold of 3 l. *per Annum*, and to be certified, &c. under the Hands and Seals of three Justices where the Land lieth: The Forfeiture is 20 s. *per Month*. This is repealed by 5 & 6 Will. & Maria, cap. 3.

Clothworker.	Sheerman.	Taylor.
Fuller.	Shoemaker.	Weaver.

Having three Apprentices, shall likewise keep one Journeyman; and if above three Apprentices, then another Journeyman, on Pain of 10 l.

Concerning these Certificates, they were not much in Use when Dalton wrote, but now they are wholly disused; neither is there Regard of the Ability of the Parents whose Children

Apprentices.

37

are placed to any of the Trades above-mentioned, or to any other Trade whatsoever.

'Tis probable when the Statute 4 *Eliz.* was made, it might be then intended, that if the Father had 40 *s. per Annum* and bound his Son Apprentice to a Goldsmith in a Corporation, he might be able to give him a competent Fortune to set up his Trade; but such an Estate now will scarce be sufficient to make his Son a Cocker.

2. Every unmarried Person, and likewise every married Person, under the Age of thirty Years, shall be compelled to serve in these Trades following, upon Request of any Person using the same.

*Who shall
be compelled
to serve
in Trades.*

Arrow-head-maker.	Dyer.	Sadler.
Baker.	Farrier.	Sheerman.
Brewer.	Felt-maker.	Shoemaker.
Butcher.	Fletcher.	Smith.
Capper.	Fuller.	Spurrier.
Clothier.	Glover.	Tanner.
Cloth-worker.	Hat-maker.	Taylor.
Cook.	Hosier.	Tucker.
Currier.	Miller.	Turner.
Cutler.	Pewterer.	Woollen-Weaver.

But then the Person who is compelled to serve in these Trades, must be brought up in the Trade, or must have used it for the Space of three Years or more, and the Retainer must not be for less than a Year.

But if he have Inheritance or Freehold for Life, of the yearly Value of 40 *s.* or be worth 10 *l.* in Goods, he is not compellable to serve.

The Ability of the Person must be allowed by two Justices or by the Mayor or Head-Officer of a Town Corporate, where he dwelt for a Year together, with two Aldermen or Burgeffes, under their Hands and Seals.

He must not be retained in Husbandry, or in any Art or Science, nor be a Servant, or in Office, with any Gentleman or others, nor have a Farm in Tillage, wherein to employ his Labour.

In the same Sessions of Parliament, viz. 5 *Eliz.* a Law was made, That Owners of Ships or Vessels, or any Housholder using the Trade of the Seas by Fishing or otherwise, &c. might take and keep one or more Apprentices to be bound for 10 Years *Eliz. c. 5.* or under, by Writing indented and inrolled in the Town where such Apprentice dwells, if 'tis a Town Corporate, and if not, then in the next Town Corporate.

Since the Making this Act, a Mariner took an Apprentice by Indenture, and there was a Bond for Performance of Covenants; the Apprentice run away, the Bond was put in Suit, and the Obligee

1 Lutw.
474.

Obligee pleaded this Statute, and that the Indenture was not enrolled: But the Case was not argued, and so no Judgment given.

And now by a late Act, *Anno 2 Anna*, Provision was made for putting poor Boys Apprentices to Seamen; which see in Title *Seamen*.

The Time of Service must not be less than for a whole Year.

It being found by Experience, that the *English* excel most People in Manufactories; therefore they have been enticed by great Wages to leave the Land, and to teach several Trades to Foreigners, which being prejudicial to the Trade of this Nation, a Law was made, by which it was enacted, That if any Person shall be convicted upon an Indictment or Information at the Assizes or Sessions, for contracting with, or enticing, or endeavouring to persuade or sollicit any Artificer in Wool, Iron, Steel, Brass or other Metal, Clock-maker, Watch-maker, or any Artificer to go out of the King's Dominions, shall be fined for the first Offence by the Court in any Sum not exceeding One hundred Pounds, and shall be committed for three Months, and until the Fine be paid; and for the second Offence, shall be fined at the Discretion of the Court where he was convicted, and shall be committed for twelve Months, and until he pay the Fine: The Prosecution must be within twelve Months next after the Offence committed.

5 G. c. 27.

Any such Artificer going into any Foreign Country there to exercise, or teach his Trade to Foreigners, or being there, and shall not return within six Months after Warning given him by our Envoy or other Minister there, and continually afterwards inhabit here; in such Case he shall be incapable of taking any Legacy, or of being an Executor, or Administrator, and shall be incapable of taking any Lands by Devise or Descent, and shall forfeit all his Lands to the King, and be deemed as an Alien.

After 1st. May 1720. Upon Complaint made on Oath before one Justice, that a Person is endeavouring to seduce any Manufacturer or Artificer out of the Realm, or that he hath already contracted or promised, or is preparing to go out of the Realm for the Purposes aforesaid, the Justice shall send his Warrant to bring the Person before him or some other Justice, &c. and if it shall appear to him upon the Oath of one Witness, or the Confession of the Party, that he is guilty of the said Offence, then the Justice shall bind him over to the next Sessions or Assizes, with reasonable Sureties for his Appearance, and if he neglect or refuse to give such Security, then the Justice may commit him to the County-Gaol, there to be kept till the next Assizes or Sessions, and until he shall be delivered by due Course of Law: And if such Artificer or Manufacturer shall be convicted at the next Assizes or Sessions, upon an Indictment of

of any such Promise or Contract made, or Preparation to go beyond Sea, for the Purposes aforesaid, he shall then give Security to the King, not to depart out of his Dominions for the Purposes aforesaid, as the Court shall think reasonable, and shall be committed till he give such Security.

A Warrant against one enticing an Artificer to go out of the Realm.

To the Constable, &c.

Wilts, ff. **W** Hereas Complaint hath been made unto me, upon the Oath of W. R. of, &c. that T. W. of, &c. did on the 12th Day of July last past, at B. in the County aforesaid, endeavour to * seduce M. M. of, &c. being an Artificer in Brasse, to go out of the Realm, into a Foreign Country to the Dominions of the Czar of Muscovy, there to exercise his Trade of a Clock-maker, and to teach the same to Foreigners there: These are therefore to require you to apprehend the said T. W. and to bring him before me or some other Justice of the Peace for the County aforesaid, to answer the Premises, &c.

** Or that the Party himself hath promised or contracted to go out of the Realm.*

If it appear to the Justice upon the Oath of one Witness, or the Confession of the Party that he is guilty of this Offence, then he must enter into a Recognizance with Sureties to appear at the next Sessions or Assizes.

A *Mittimus* for not entring into a Recognizance to appear, &c.

To the Constable of, &c. and to the Keeper of the County-Gaol in the County of W.

Wilts' ff. **W** Hereas it appeareth to me upon the Oath of W. R. of, &c. that T. W. of, &c. did on the 12th Day of July last past, at B. in the County aforesaid, endeavour to seduce into a Foreign Country in the Dominions of the Czar of Muscovy, there to exercise his Trade of a Clock-maker, and to teach the same to Foreigners, contrary to the Statute in that Case made and provided, and that the said T. W. hath neglected to give Security for his Appearance at the next Assizes, to be held for the said County. These are therefore to require you to convey the said T. W. to the County-Gaol in W. aforesaid, and to deliver him to the Keeper thereof, who is hereby commanded to receive him into the said Gaol, and there safely to keep him till the next Assizes as aforesaid, and until he shall be delivered by due Course of Law, &c.

6 G. c. 11. Upon Payment of the several Rates and Duties omitted to be paid, on or before the 29th of September, 1720. upon Monies given, paid or contracted for with Apprentices, and to have the Indentures stamp'd, and tendering to be stamp'd, such Indentures omitted to be stamp'd at any Time before the 25th of Decemb. 1720, the same Indentures shall be good in Law, and may be given in Evidence in any Court, and the Apprentices therein named shall be capable of following their Trades as fully as if the Duties so omitted had been duly paid before, and the Persons who have incurred any Penalty by such Omission are discharged from the same.

Apprentices in Husbandry.

1. Who shall take Apprentices, and at what Age.
2. Who shall be compelled to serve, and at what Age, &c.

Apprentices in Husbandry. Every Husbandman keeping House, and using Half a Plow-Land in Tillage, may take an Apprentice by Indenture, who must be above the Age of 10, and under 18, and he must serve till 21, or 24, as the Parties can agree.

5 Eliz. c. 4. And any Justice of Peace may compel fit Persons under the Age of 21 Years to be bound Apprentices in Husbandry, and to commit them upon Refusal, there to remain till bound to serve.

Het. 164. An Information was brought upon this Statute, for detaining an Apprentice in Husbandry, being bound till 21. and for departing without a Testimonial: Two Judges were of Opinion, That it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant; for an Action on the Case lies against the Receiver, and Covenant against the Party.

Servants in Husbandry. Any Person between the Age of twelve and sixty Years may be retained in Husbandry, not being employed in Coal, Fishing, Glass, Mines, Sailing or providing Grain or Meal for London; he must be neither Gentleman nor Scholar, nor worth 40 s. per Ann. in Lands, or 10 l. in Goods, nor Heir to 10 l. per Ann. or to 40 l. in Goods.

The Retaining, as well in Husbandry, as in the Trades above-mentioned, must be for a Year, and the Service must continue so long, and the Testimonial required by this Statute relates only to such Servants so retained, and not to our ordinary Menial Servants.

Departure of either. They are not to depart to serve in another Place without a Testimonial; if in a Town Corporate, under the Town-Seal, and the Seals of two Housholders there; if in the Country, then under the Seal of the Constable of the Parish where he

he last served. This must be registred by the Parson where the Master dwelleth; for which he is to have 2 d. The Form is,

Memorandum. **T**HAT W. G. Servant to W. N. of H. in the County of S. Husbandman, (or Brewer, as the Trade is) is licens'd to depart from his said Master, and is at his Liberty to serve elsewhere, according to the Statute in that Case made and provided. In Witness whereof, &c. Dated the Day, Month, Year and Place of making thereof.

Servants; and therefore an Indictment for retaining a Servant without a Testimonial was quash'd, because it did not shew in what Trade. 1 Mod. 78. Hett. 164.

The Servant, who hath no such Testimonial to produce to an Officer where he is to dwell, shall be committed till he procure one; and if he doth not get one in 21 Days, or shews a false one, he shall be whipped as a Vagabond, The Master, who retains a Servant without Testimonial, forfeits five Pounds.

If he do not his Duty, the Master may complain to one Justice, who may reconcile them if he can; and if the Fault shall by him be adjudg'd in the Apprentice, then the said Justice may send him to the House of Correction. *The Manner of punishing or discharging them.*

'Tis true, there is no express Authority given to the Justice to send a disorderly Apprentice thither; but it seems to be warranted upon the Preamble of the Statute 7 Jac. c. 4. made for erecting such Houses to punish idle and disorderly Persons: But the safest Way is to bind him over to the Sessions, and from thence he may be sent to the House of Correction.

Neither have the Justices any express Power to discharge an Apprentice, if the Fault is in him, as they have, if the Fault is in the Master; but it hath been held, and so is the Law now, that the Clause in the Act, which gives the Justices in their Sessions Power to inflict a Corporal Punishment on a bad Apprentice, is rather an Enlargement than a Restraint of their Authority, for they cannot punish a bad Master, but may discharge a bad Apprentice; but they may either punish or discharge a bad Apprentice, as they shall think fit. 1 Mod. 286. 1 Saun. 314. 1 Vent. 174.

The Sessions in this Case have only a Conditional Power, viz. to discharge or punish, if one Justice cannot compose the Difference, and therefore Application ought first to be made to him.

If the Fault be found in the Master, then the Justice may bind him over to the Sessions, and four Justices there may discharge the Apprentice, which Discharge is to be enrolled by the Clerk of the Peace.

The Discharge must be under their several Hands and Seals; and therefore where the four Justices subscribed three Names,

Names, and there was but one Seal, the Order was quash'd,
1 *Anna*, B. R.

But by the Opinion of *Holt*, Chief Justice, the single Justice hath Power to make an Order, which if the Master obey, then the Sessions have no Power; if he disobey, then upon Complaint made, the Justice may bind the Master over to the Sessions, and that they have no Power otherwise.

2 Salk. 491. But he agreed this was against the general Practice; for the Sessions have originally discharged several Apprentices without any Application to a Justice, and many such Orders

Dalt. 87. have been confirmed *above*, which he would not unsettle. *Hill*, 11 W. B. R.

The Master and Apprentice may agree to leave each other; and in such Case the Master may give Leave under his Hand to depart, and then one Justice out of Sessions may discharge him, by allowing the Cause of Putting him away. 5 *Eliz.* cap. 4.

Mod. Cases 70. Covenant brought by the Master against his Apprentice for leaving his Service, *Holt*, Chief Justice, of Opinion, That if the Master give a Licence to the Apprentice to leave his Service, it cannot afterwards be recalled; therefore if the Master bring an Action of Covenant against the Defendant, for leaving his Service at *such a Time*, and the Defendant justifies by Virtue of a Licence at the Time, that upon such a Declaration the Master shall not give Evidence of his Apprentice leaving him at *any other Time*, because in this Case the Time is material and not transitory as in Trespass.

2 Salk. 471. One Gately a Mountebank kept a Stage in *Yorkshire*, and there he took one *Green* to be his Apprentice, and covenanted to teach him the Art of a Surgeon; and being afterwards with his Apprentice in *Middlesex*, he complained to the Justices that his Master did not teach him the Trade, and thereupon an Order was made to discharge him; but that Order was set aside, because though by Statute 5 *Eliz.* the Clause which relates to the *Serving an Apprenticeship* is in those general Words, viz. *Arts and Sciences*, under which Words a Surgeon may be comprehended, yet the other Words, which relate to the *Discharging Apprentices* extend only to the *Trades* therein mention'd, amongst which neither a Surgeon or Mountebank are mention'd.

By the Statute 5 *Eliz.* 'tis enacted, That upon the Appearance of the Master, four Justices may discharge the Apprentice, after one Justice hath endeavoured to compose the Matter in Difference. An Order was made to discharge an Apprentice; it was objected to quash it, that the Master did not appear, and therefore the Justices could not discharge the Apprentice: *Sed per Curiam*, the Statute must have a reasonable Construction, for if the Master should run away, the Apprentice might be discharg'd; but by the Order it appeared,

peared, that the Master was a Collar-Maker, which is not a Trade mention'd in the Statute in the Clause of *Discharging Apprentices*.

One cannot be made an Apprentice without a Writing, therefore he cannot be discharged but by a Writing under the Hand of his Master.

Not allowing Meat, Drink or Wages agreed on; this is a good Cause to be allowed by the Justice, &c. *F. N. B. 168. L.* so is Beating him unreasonably. *F. N. B. 168. Let. Q.*

Any departing from his Service whatsoever, refusing to do any reasonable Service, is a Departure in Law; but as to that Part of the Act, which says, an Apprentice departing without a Testimonial, shall be whipped as a Vagabond, it must be an Apprentice in Husbandry, and one of full Age; for otherwise an Infant, who is the Son of a Gentleman, may be punished as a Rogue. *Winch 25.*

If he steal any Thing from his Master above the Value of 12 d. not delivered to him to keep, upon due Proof thereof made before one Justice, he may commit him to Gaol, together with those who perswaded him to commit the Felony, and those who receiv'd the Goods, knowing them to be stol'n; but if under that Value, then they may be all sent to the House of Correction by one Justice; but according to *Dalton*, rather by the Sessions. See the *Stat. 12 Anne, cap. 7.* in Title *Felony*.

The Justice who shall be absent once a Year at *Easter* Sessions, or six Weeks afterwards, when the Wages of Labourers, &c. shall be taxed, without a reasonable Excuse to be allowed by the Rest of the Justices upon Affidavit, forfeits 10 l.

They are to meet twice a Year, viz. between *Michaelmas* and *Christmas*, and between *Lady-day* and *Midsummer*, to give Order for the due Execution of the Act; and they are to have 5 s. *per diem*, not exceeding three Days, to be allowed out of the Fines arising by Breach of that Law.

One Moiety to the King, the other to the Informer, other than such as are expressly otherwise appointed to be recovered by Action of Debt or Information, or upon Indictment at the Sessions; and notwithstanding the Forfeitures in Cities and Corporations are given to the Use of the Corporation for the Relief of the Poor, yet the Informer shall have his Part still, and that Part which was to be to the King, shall go to the Corporation. *Cro. Car. 316.*

For seven Years; and none who hath not serv'd that Time in any Art or Mystery, shall use the same, or set any to work thereon who hath not serv'd out that Time; the Penalty is 40 s. *per Month.*

But Hemp-dressers, Makers of Hemp, Cloth, Nets and Tapestry, are excepted by the Statute of 15 *Car. 2. cap. 15.*

At Common Law, any Man might use what Trade and as many as he would. This Liberty was first prohibited by the Statute

Statute of 37 E. 3. but a short Experience found such a Restraint to be prejudicial, and therefore that Law was repealed the very next Year after it was made.

5 Eliz.

But in Proceſs of Time, this Liberty proved injurious to Trade in general; becauſe ignorant and unſkilful Men having no Reſtraint, did uſe many Trades which they did not underſtand, and by this Means the Publick was damnified, till ſuch Men were again reſtrained by the Statute, under a Penalty, tho' Ignorance is a ſufficient Punishment to any Man; and it may be, that this Law was made, not only that Workmen ſhould be ſkilful, but that Youth might be brought up in ſome lawful Trade. 11 Rep. 54.

Penalty
where no be
recovered.

Now in what Court this Penalty is to be recovered, it hath been a Queſtion; for it hath been held, That notwithstanding the Statute 31 Eliz. cap. 3. which limits Informations upon this very Act to be proſecuted in the proper County where the Offence was committed; yet Informations were ſtill brought in the Courts above, becauſe the Attorney-General was not expreſſly prohibited by that Law, in whoſe Name Proſecutions are made in the Crown-Office.

But afterwards, by the Statute 21 Jac. cap. 4. he is reſtrained; the Words of which Act are,

Viz. All Offences to be committed againſt any Penal Law, for which any Common Informer may lawfully bring any popular Action, Bill, Suit or Information, ſhall be commenced by Way of Action, Plaint, Bill, Information or Indiſtment, before Juſtices of Aſſize, *Niſi Prius*, Oyer and Terminer, or before Juſtices of Peace of every County, &c. where ſuch Offences ſhall be committed, at the Choice of the Party who ſhall commence ſuch Suit, and not elſewhere, (that is, when the Party might bring the Action either above, or in an inferiour Court) and that all Informations, &c. to be brought by the Attorney-General or Informer in any Courts of *Westminster* for ſuch Offences, ſhall be void. This Clauſe was added by Serjeant Rolle.

But ſome
Judges
have held,

This Statute hath been held to reſtrain Informations above, but not an Action of *Debt* by a common Informer, ſo that the Miſchief is the ſame ſtill, and the Statute wholly eluded. That where-ever there is a Remedy below, as by an Information, this Action ought not to be brought above, unleſs in *Middleſex*, where B. R. ſits. And this was agreed by all the Judges lately in *Hick's Caſe*. 10 W.

Now the Reaſon given why an Action of *Debt* is not reſtrained, is, becauſe generally in Penal Statutes (eſpecially in thoſe which were made before the Statute 21 Jac.) Direction is given for the Recovery of the Forfeitures, by Action of *Debt*, Information, or otherwiſe; in which Actions or Suits, no *Wager of Law* or *Eſſoin* ſhall be allowed. By which Words, the Courts
above

above do still retain the same Jurisdiction, because there are no Effoins or Wager of Law in inferiour Courts. *Cro. Car.* 113, 146. *Sid.* 400.

But in *Hick's Case*, 10 *W.* it was resolved, That the Statute 21 *Jac.* restrains the Jurisdiction of *B. R.* in *Actions of Debt* by common Informers, and that they cannot bring Debt there unless the Cause of Action arise in the County of *Middlesex*, where *B. R.* sits; but when a Remedy is given by Action by any subsequent Penal Law, such Action is not restrain'd to the proper County, though the Chief Justice *Holt* was of Opinion, That where any subsequent Statute gives a popular Action, it must be laid in the proper County within the Equity of the Statute 21 *Jac.*

Any Trade, in which there is an Art or Mystery, is within the Intent and Meaning of this Statute, so as it doth not purely consist in Labour, and so as the Party gets his Livelihood thereby; but then such Trade must be exercised in a Corporation, or Market-Town not Corporate; for it hath been held, That the Statute extends to such, and not to Trades used in Villages, *viz.* it directs, That Householders in a Corporation, 1 *Mod.* 26. or in a Town incorporate, which is a Market-Town, and using any Art or Mystery there, may take Apprentices for seven Years: And that no Person shall exercise any Art, &c. which hath not been brought up therein for seven Years in Manner and Form aforesaid. And Justice *Twydden* said, That he heard all the Judges of *England* declare, that the Statute 5 *El.* should not be extended farther than needs must.

Note, It hath been adjudged, that a Person serving as an Apprentice for

seven Years, tho' not bound, is out of the Statute of 5 *Eliz.*

The Words of the Statute are, That it shall be enquired of, heard and determined in the *Affizes or General Quarter-Sessions of the Peace of the same County*, &c. Yet an Indictment for exercising the Trade of a *Goldsmith*, not being an Apprentice for seven Years, was found at a *Borough-Sessions* and held good; but it was quash'd for another Reason, (*viz.*) because it was *presentant existit for presentatum existit*. *Mich.* 3 & 4 *W. & M.*

Officers and Soldiers who have served the Crown, and not deserted, and who have formerly used any Trade, or were Apprentices, or any other Soldier who is apt and able to practise any Trade, may set up the same (*viz.*) Apprentices as if they had served out their full Time, and all others may set up Trades in any Place in the Counties where they were born; and if prosecuted for the same, then upon the general Issue pleaded they shall be found not guilty, and have treble Costs; but the Proof of their Service must be by a Certificate under the Hand and Seal of some Field-Officer, or two Commission-Officers of the Regiment where he served, or some General Officer of the Army. This Certificate to be proved by one Witness;

10, 11 *W.*
cap. 11.
12 *A. C.* 13.

ness; or in Default of such Certificate by the Oath of two credible Witnesses.

Poor App-
rentices.
43 Eliz.c.2.

1. Who shall be bound, and by whom.
2. Who shall take them, and at what Age.
3. How the Money to put them out shall be raised and dispos'd.

1 Who shall
be bound.

The Children of such Parents who are not able to maintain them, may be put out Apprentices; and the Parents refusing to suffer them, may be bound over to the Sessions. *Dalt.* 107.

Or if he re-
fuse, send
him to the
House of
Correction

But this must be by the Assent of two Justices; and the Overseers of the Poor, or the greater Part of them, are to place out such Children; and the Law hath made them Judges of the Disability of the Parents: And one Justice may compel any Person meet to be bound. *Dalt.* 103.

There is no Necessity of giving Money with them; 'tis Discretionary in the Churchwardens whether they will give any or not. *Dalt.* 106.

2 Who shall
take them.

Every Man of good Estate or Ability may be compelled to take Apprentices, or every Man who by his Profession or Manner of living must keep such Servants; for the Power given to Churchwardens to place them out, doth necessarily imply, that such who are fit to be Masters must take them.

8 & 9 W.
c. 30.

Before the Statute 8 & 9 W. if a Master had refus'd to receive such an Apprentice, he was to be bound over to the Assizes; and if he refus'd to give Bond, he might be committed, or the Churchwardens and Overseers by the Consent of two Justices might fine him; which if he refus'd to pay, the two Justices might make a Warrant to levy it by Distress, &c. or he might be presented and indicted at Sessions, and there fin'd or imprison'd.

But now by that Statute, if one Churchwarden makes Oath of the Refusal of the Master before two Justices, he forfeits 10*l.* to be levied by Warrant of the said Justices, to the Use of the Poor; but the Party may appeal to the next Sessions, whose Order is final.

2 Salk. 491.
Minch-
amp's Case.

The Churchwardens and Overseers of the Poor by an Indenture confirm'd by two Justices bound a poor Girl Apprentice to a Merchant; he appeal'd to the Sessions, and there it was discharg'd, and this Order of Sessions was confirm'd by B. R. because by the aforesaid Statute Persons being compell'd to take Apprentices, and an Appeal being given to the Sessions, they are now become the proper Judges what Person is fit to receive a poor Apprentice or not.

The Justices may discharge an Apprentice, and order a Restitution of the Money; and if the Master is bound to appear

at the Sessions, yet they may proceed to make an Order against him. *H. 11 W.*

The Churchwardens cannot place them to Masters in another Parish, but the Justices in Sessions may; and if there are not Masters fit to receive them in any Hundred, then they may be put out in the County at large; but this must be by the Sessions.

Lessee for Years of a Farm taketh an Apprentice, and the Term expires before the Apprenticeship ended, he must go with the Farm, if his Master will permit him; but where a Man taketh an Apprentice by reason of his Ability, and the Master dieth before the End of the Apprenticeship, he shall go to the Executor or Administrator, if he hath Assets; and if none, then he must return to the Parish where last settled.

Clergymen are not exempted from taking Apprentices. *Dalt.* 106.

Indictment for that a poor Boy being put out Apprentice pursuant to the Statute, the Master refused to provide for him, and this was held good since the Statute, 8 & 9 *W.* For since the Justices have Power to put out Apprentices, the Court will allow an Indictment for a Disobedience, either in not receiving, not providing for him, or for turning him away.

By the Overseers weekly, or otherwise, by taxing every Inhabitant, Parson, Vicar, and Occupier of Lands, Houses, Tithes, &c. as they shall think fit.

Money given to put out poor Children Apprentices, if in Towns corporate, shall be employed by the Corporation; if in other Places, then by the Parson, together with the Constable, Churchwardens and Overseers, &c. or the greater Part of them; who if they refuse, forfeit five Marks each of them to the Use of the Poor.

The Master must give Security to repay what Money he takes with an Apprentice at the End of seven Years next ensuing the Date of the Bond, or within one Year after the Death of his Apprentice, if he die within that Time.

If no fit Persons to be Apprentices in the Place where the Money is given, it may be employed in the Parishes adjoining.

The Trustees must account in *Easter* Week to the two next Justices.

They must be above Seven, and under fifteen; for if above that Age they cannot be compelled: But they must work, or go to Service, or be sent to the House of Correction, or bound over to the Sessions, or to the good Behaviour.

The Man-Child shall be bound till he come to the Age of twenty-four Years.

3. How the Money shall be raised. Stat. 7. Jac. cap. 1.

At what Age poor Apprentices may be bound. Jac. cap. 3.

Above

At what
Age Ap-
prentices
to Trades

Above the Age of ten Years, any Person may be bound by his own Agreement by Indenture, &c. and if above twelve, he may be compelled by a Justice.

upon the Statute 5 Eliz. cap. 4. may be bound.

Vagrants
and
Rogues,
&c.

And Note, by the Statute 12 Ann. Sess. 2. cap. 23. Such as have no legal Settlement, or Vagrants, or common Beggars for two Years past, (tho' formerly settled) or dangerous and incorrigible Rogues within that Act, may be forced to serve seven Years Apprenticeship to any that will take them; and may be afterwards sent to the Plantations, provided the Master give a Recognizance of 40 l. not to sell them to any Alien; and any Justice may take such Recognizance, and must transmit it to the next Quarter-Sessions, to be there filed. *Vide Tit. Vagrant.*

Labourers.

1. Who may be compelled to work, and how punished if refuse.
 2. How long they must continue at work.
 3. Punishment for departing, when they are to work by the Great.
- For what Wages they shall work.
5. Punishment of giving greater Wages than allow'd, &c.

1. Who
may be
compelled
to work.

He who hath no Lands of his own, or is not of some Trade or Mystery to get a Livelihood. F. N. B. 168. B.

The Churchwardens and Overseers, &c. may set such Person to work; and if he refuse, one Justice may send him to the House of Correction: So he may those that refuse to work for reasonable Wages.

6 Eliz. c. 4.

Persons brought up in Husbandry, or in any of the Arts or Trades before-mentioned, and not able to get a Livelihood, if under thirty Years of Age, and having no visible Means to maintain themselves but by Labour, may be warned by two Justices to get a Service by a certain Day; and if they neglect or refuse to be hired for a Year, they may be sent to the House of Correction, or bound over to the next Assizes or Sessions, and to be of the Good Behaviour in the mean Time. *Dalt. 116.*

Harvest.

3 Eliz. c. 4.

One Justice may put in the Stocks for two Days and one Night, such as he in his Discretion shall think fit to work, and command so to do, if they refuse in the Time of Harvest.

Artificers must likewise work in Hay-time and Harvest, and if they refuse, the Constable shall put them in the Stocks for the like Time; and the Constable neglecting therein, forfeits 40 s.

Labourers
2. How
long they
must con-
tinue at
work.

In Hay-time and Harvest, Labourers may go into other Counties to work; but then they must have a Testimonial under the Hand and Seal of one Justice, to signify that they had not Work where they lived the Winter before.

If

If they work by the Day, or by the Week, they must continue working from five in the Morning 'till after seven at Night, from the Middle of *March*, to the Middle of *September*, and all the rest of the Year, from Twilight to Twilight; only from *March* to *September* as aforesaid, they are to be allow'd two Hours for Breakfast, Dinner and Drinking; and from the Middle of *May* to the Middle of *August*, half an Hour more for sleeping; and all the rest of the Year, an Hour and an half for Breakfast and Dinner; and for the Absence of every Hour, the Master may defalk a Penny out of the Wages. 4 *Eliz. cap. 4.*

If they depart before it is finished (except for Non-payment of Wages agreed on, or with Leave of the Master, or being taken into the King's Service, or for other lawful Cause) they are to be committed for a Month without Bail, and to forfeit 5 *l.* to the Party grieved, to be recovered by Action of Debt, &c. over and above the Costs and Damages as by Law may be recovered for such Offence.

(*Viz.*) The Wages of Artificers, Labourers and others, shall yearly be assessed by the Sheriff of the County; this is by Virtue of the Stat. of 5 *Eliz. cap. 4.* but the Justices of Peace or the greatest Part of them resident in the County, have the like Power in their * Sessions every *Easter*, or within six Weeks after. This Assessment by the Statute of Queen *Elizabeth* must be certified under their Hands and Seals to the Chancellor, &c. who thereupon sends Proclamations into every County and Corporation before the first of *September* following, which the Sheriff or chief Officer must cause to be proclaimed and enrolled by the Clerk of the Peace before *Michaelmas* ensuing; but if no Alteration is made in the old Rates, then there is no need of such Proclamation.

Every Justice, &c. who shall be absent at the Taxing the Wages, not being sick, or not having some reasonable Excuse to be proved upon Oath, and allowed by the rest of the Justices, shall forfeit 10 *l.* one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, Information, or otherwise.

He who gives more Wages, forfeits 5 *l.* and may be committed for ten Days without Bail: He who takes more Wages, and is convicted before two Justices, or a Head-Officer, shall be committed for twenty Days. But a Master may reward a Servant as he pleaseth, so as it be not by Way of Contract upon the Retainer.

By the Statute of 1 *Anne*, all Payments for Work done in the *Woollen*, *Linen*, *Fustian*, *Cotton*, and *Iron* Manufactures, must be in current Money, and not in Cloth, Victuals, or other Commodities; and all the Wool delivered to them to be wrought, shall be first weighed, and the true Weight thereof declared.

2. Punishment for departing when Work is to be taken by the Great.

4. For what Wages Labourers are to work. * Jac. c. 6. By this Stat. it need not be certified into the Chancery, but only proclaimed in the County. 5 *Eliz. c. 4.*

5. Punishment of giving greater Wages.

Apprentices.

The Offender in either of these Cases forfeits to the Labourer double the Value of what shall be due for his Work.

But if the Labourer shall be guilty of any Fraud or Fault in his Work, then he must answer to the Owner double the Damages by him sustained.

Then as to determining the *Wages, Demands, Frauds, and Deceits* of Labourers in Woollen, &c. it must be by any two Justices of Peace where the Controversy doth arise, who may examine Witnesses on Oath; but there lies an Appeal from the Order of the two Justices to the next Sessions after Notice of the said Order, whose Judgment shall be final; and if for the Appellee, then they may give Costs and Charges.

The Act is to continue for three Years, from the 24th of January 1703, and so to the End of next Session of Parliament.

Menial Servants. Concerning *Menial Servants*, these Things are to be observed:

1. Who may be compell'd to serve.
2. The putting away a Servant before the End of his Time.
3. A Servant departing himself.
4. Assaulting his Master.
5. Concerning Wages.

1. Who may be compelled to serve.

All single Persons under the Age of Thirty, may be warned by two Justices to put themselves into Service at a Time prefixed; and any Woman upwards of Twelve, and under forty Years, being unmarried, may be compell'd by two Justices to go to Service; and if they neglect, and continue to live idly, having no visible Estate, or lawful Way to maintain themselves, may be sent to the House of Correction, or bound over to the Sessions, and to be of the Good Behaviour in the mean Time.

2. Putting away a Servant before the End of his Time.

If a Woman-Servant marrieth, she must serve out her Time; and if both Man and Wife agree to serve, they must perform the Agreement. *Dalt. 92.*

The Master cannot do it without some reasonable Cause to be allowed by one Justice, nor after the End of his Time, without a Quarter's Warning given before two Witnesses; if he is otherwise discharged, 'tis unlawful, and the Master forfeits 40s. if he cannot satisfy the Sessions by the Proof of two Witnesses, that he was put away for reasonable Cause.

He ought not to be discharged by Reason of Sickness, or any other Disability by the Act of God.

The Law hath made the Justice of Peace the sole Judge, whether the Servant was put away for a reasonable Cause or not.

But they may depart from each other by mutual Assent.

5. Servant departing himself.

If he depart before the End of his Term, being hired for a Year, without a Cause to be allowed by the Justice; or after his

Apprentices.

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his Term is expired, without giving a Quarter's Warning be- Vide Ser-
fore two Witnesses; in such Case two Justices may commit him wants in
without Bail, till he give Security to serve for the Time a- Bail.
greed on.

Or by Virtue of the Statute of 7 Jac. cap. 4. one Justice may send him to the House of Correction, there to be punished as an idle and disorderly Person.

But both Master and Servant may part by Consent, and then the Allowance of a Justice is not requisite, because 'tis neither a Putting away or Departing intended by the Statute.

As to the Testimonial, it seems only to relate to Servants in Trades and Husbandry.

Detaining Wages, or not allowing Meat, &c. is good Cause of Departure, but must be allowed by a Justice.

It was a Question whether an Indictment would lie for *enticing a Servant*, or an *Apprentice* out of his Master's Service, and to carry off his Goods, for 'tis but a private Injury, and not in its Nature publick; and therefore an Action on the Case lies for *enticing*, but *Trespass* will lie for *taking* him out of his actual Service: And the Court upon a Motion in Arrest of Judgment was of that Opinion that an Indictment would not lie. H. 2.

Anna.

A Servant or Workman assaulting his Master; one Justice 4. Servant.
may bind him to the Good Behaviour, and so to the next assaulting
Sessions. his Master.

Or two Justices may commit him for a Year or less, according to their Discretions; the Proofs must be made before the Justices committing, either by the Confession of the Servant, or the Oath of two Witnesses.

All Retainers, Promises or *Payment* of Wages contrary to the Statute, and all Writings and Bonds for that Purport, are void.

If the Master put away the Servant, he must have Wages 5 Wages.
to the Time he served; but if the Servant depart himself before the End of his Time, he loses all his Wages.

If he is retained according to the Statute for a Year, and the Master dieth within that Time, the Executor must pay the Wages; otherwise, if the Retainer was not for a Year.

His Wages ought not to be abated in respect of Sickness, or any other Disability by the Act of God.

If the Master give, or the Servant take greater Wages than allowed by the Statute, two Justices may commit the one for ten Days, and the other one and twenty Days without Bail; and the Master also forfeits 5*l*.

Apprentices.

Warrants upon the Statute of 5 Eliz. cap. 4. concerning Apprentices.

A Warrant against a disorderly Apprentice.

To the Constable, &c.

5 Eliz. c. 4. Sussex, ff.
He may be
sent to the
House of
Correction.

W Hereas Complaint hath been made unto me by T. P. of, &c. Taylor, That J. O. now being an Apprentice to him, is a stubborn and disorderly Servant, and doth very much misbehave himself towards his said Master: These are therefore to command you to bring both the said Master and his said Apprentice before me, or some other Justices of the Peace for the said County to be examined concerning the Premises; and further, that such Order and Direction may be taken between them, as to Justice doth appertain. Given under my Hand and Seal, &c.

A Warrant against a Master for abusing his Apprentice.

To the Constable, &c.

5 Eliz. c. 4. Sussex, ff.

W Hereas Complaint hath been made unto me by R. J. Apprentice to R. N. of the Parish of, &c. Weaver, That the said R. N. doth not allow unto his said Apprentice sufficient Meat, Drink, and Apparel, but hath often immoderately corrected him without any just Cause, &c. These are therefore (as in the former Warrant.)

Or Mayor,
or Head
Officer of
a Corpora-
tion.

This Warrant must be made by the Justice where the Master dwelleth; and if the Justice cannot reconcile them, he may bind the Master over to next Sessions, where four Justices, *Quorum unus*, may discharge the Apprentice under their Hands and Seals.

The Discharge.

Sussex, ff. **W** E H. P. T. N. N. S. and R. B. four of his Majesty's Justices of the Peace (one whereof is of the Quorum) for the County aforesaid, having heard and examined the Matter in Difference between R. J. an Apprentice to R. N. of, &c. and it appearing to us that the said R. N. hath not allowed his said Apprentice sufficient Meat, &c. and hath several Times beaten him very immoderately without any just Occasion: We do therefore, for the Cause aforesaid discharge the said R. J. from his said Apprenticeship; And do hereby under our respective Hands and Seals, pronounce and declare, That the said R. J. is discharged from being any longer an Apprentice to his said Master. Witness our Hands and Seals, &c.

This

Apprentices.

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This Discharge must be enrolled by the Clerk of the Peace, or Town-Clerk, which shall be good against the Master, his Executors and Administrators.

A Warrant against an Apprentice for departing from his Master.

To the Constable, &c.

Sussex, ss. **W** Hereas Complaint hath been made unto me by ^{5 Eliz. c. 4.} W. B. of L. &c. That W. C. his Apprentice The Justice hath lately departed from his Master, contrary to Law : These are may grant therefore in his Majesty's Name to command you, That you apprehend this Warrant upon the said W. C. as soon as he can be found within your several Complaint Limits, or in either of them, and to bring him before me, or some of the Ma- other Justice of Peace for this County, to answer the Premises. ster, and he Given under my Hand and Seal, &c. may recon- cile the

An Information will not lie in this Case ; but an Action on the Case against him who receives an Apprentice by Indenture, and an Action of Covenant against the Apprentice himself. he can. But I do not see

Poor Apprentices upon the Statute 43 Eliz. cap. 2. Precedents concerning them. how he can punish an Apprentice by Indenture ; the Sessions may.

A Warrant directed to the Officers to bring in the Names of such who are fit to be bound, &c.

To the Churchwardens and Overseers of the Poor of the Parish of B. in the County of Sussex, and to every of them.

Sussex, ss. **T** Hese are in his Majesty's Name to Command you, ^{43 Eliz. c. 2.} That on Monday next, the 21st Day of this Instant August, you bring unto us in Writing at the House of J. T. Two Justices, &c. the Names of such Poor Children of your Parish, whose Parents you shall not think able to maintain them, and the several Ages of such Children ; which said Children, or such as you shall think fit to be put forth Apprentices, you are to bring before us at the Time and Place aforesaid : And likewise that you do then and there present unto us in Writing the Names of such Inhabitants of your Parish, especially such who have not already taken such poor Children Apprentices, to whom you shall think fit such Children may be placed, and that you give them Notice that they are then required to appear before us to shew Cause why such Children may not be bound to them ; and that you be then also there present and fail not. Given under our Hands and Seals, &c. rum 1774.

A Warrant against a Master to levy the Penalty of 10 l. for refusing to receive an Apprentice.

8 & 9 W. cap. 30.
Two Justices
recite the
Indenture.

Suffex, ff. **W** Hereas R. J. a poor Male Child, was by the Churchwardens and Overseers of the Poor of the Parish of, &c. by and with the Assent of R. B. and W. M. two of his Majesty's Justices of the Peace for the said County, lately placed and bound by Indenture as an Apprentice to T. P. of, &c. to dwell with him from the Date of the said Indenture, until the said R. J. should attain his Age of 24 Years, pursuant to the Statute in that Case made and provided. And whereas J. O. one of the Churchwardens of the Parish of, &c. hath made Oath before us, That the said T. P. doth refuse to receive the said R. J. and provide for him, as by Law he ought to do, and doth also refuse to seal a Counterpart of the said Indenture. These are therefore in his Majesty's Name to command you, &c. to levy the Sum of 10 l. by Distress and Sale of the Goods of the said T. P. for the Use of the * Parish of, &c. And hereof fail

* Where the Offence was committed.

Servants.

Warrants concerning them.

Against a Servant departing before the End of his Time.

5 Eliz. c. 4.
Two Justices.
One Justice may allow the Cause of Departure.

Suffex, ff. **W** Hereas W. G. being lawfully hired and retained in the Service of W. N. of, &c. for the Space of one whole Year, is lately departed from his said Service without the Leave of his Master, and before the End of the said Term; These are therefore in his Majesty's Name to command you, &c. that you apprehend the said W. G. and bring him before us, or some other of his Majesty's Justices of the Peace for this County, to find sufficient Sureties faithfully to serve his said Master, according to the Agreement between them; and if he shall refuse so to do, that then you cause him to be convey'd to the common Gaol at the said County, there to remain till he shall find such Surety as aforesaid. Given under our Hands and Seals.

Or he may be sent to the House of Correction by this *Mittimus*.

To the Keeper, &c.

1 Jac. c. 4.

Suffex, ff. **I** Send you herewithal the Body of W. G. late of, &c. being an idle and disorderly Fellow, and one who will not continue in any Service, nor follow any honest Course of Life; and I require you thereby to receive the said W. G. into your Custody, and to keep him safely until he shall be from thence deliver'd by due Course

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Course of Law ; and in the mean Time to make him work, and to give him such moderate Correction as to you shall seem necessary ; and that at the next Quarter-Sessions you give an Account what you have done concerning this Precept : And hereof fail not. Given under my Hand and Seal, &c.

A Warrant for Wages.

To the Constable, &c.

Suffex, ff. **W**Hereas Complaint hath been made unto me by J. C. late Servant of T. P. of, &c. That he the said J. C. being lawfully hired by his Master, did serve him for the Space of, &c. and that the said T. P. doth now refuse to pay the Wages which are justly due to his said Servant for the Time he hath served him : These are therefore to require you to bring the said T. P. before me, or some other Justice of Peace for this County, to answer the Premises ; and that you give Notice to the said J. C. to be then and there present to make good his Complaint. Given under my Hand and Seal, &c.

To command a Woman that works at her own Hands, to go to Service.

To the Constable, &c.

Suffex, ff. **W**E R. B. and W. N. two of his Majesty's Justices of the Peace for the County aforesaid, being informed, That S. W. of, &c. is a Person of able Body, and not having any visible Means to maintain her self but by Labour, doth refuse to go to Service, but liveth by working at her own Hands : You are therefore required forthwith to give Notice to the said S. W. that she put her self into some Service before Michaelmas Day next ensuing ; and she is hereby likewise commanded to conform her self hereunto. Given under our Hands, &c.

Eliz. c. 4.
Women of
the Age of
Twelve,
and under
Forty, un-
married,
and out of
Service.
The like
Warrant
for any sin-
gle Person

under the Age of Thirty ; and if he refuse, he may be sent to the House of Correction, or bound over to the Sessions, Dalton 116: If she refuse, she may be committed till she become bound to serve.

A Warrant to levy 40 s. on a Master, for putting away a Servant before the End of his Term, without a sufficient Cause to be allowed by one Justice, or a Quarter's Warning before the End of the Term; but then the Retainer must be either in the Arts or Mysteries mentioned in the Statute; as *Baker, Brewer, Butcher, &c.* or in Husbandry; for the Statute doth not seem to extend to common hired Servants, tho' the Practice is otherwise.

To the Constable, &c.

Suffex, ss. **W** Hereas it hath been duly proved upon Oath before us, That R. C. of, &c. Baker, hath put away N. V. his Servant (being lawfully retained) before the End of the Term agreed on between them, contrary to the Statute in that Case made and provided: These are therefore to require you to levy the Sum of 40 s. forfeited by him for the said Offence, by Distress and Sale of the Goods of the said R. C. rendring unto him the Overplus. And we do hereby require you to bring the said * 40 s. into Court at the next General Quarter-Sessions to be holden, &c. except the said R. C. shall in the mean Time shew some reasonable and sufficient Cause to be allowed before two Justices of the Peace, or one at least, within the County aforesaid, for putting away his said Servant in Manner as herein and hereby alleged: And hereof fail not. Given at the General Quarter-Sessions of the Peace held for the County aforesaid at L. &c.

* Because the Party hath Liberty to prove by two Witnesses at the Sessions the Cause, &c. to save his Forfeitures, if the single Justice, or two of them, shall not allow the Cause out of Sessions.

A Warrant for the Relief of a Servant out of Service.

To the Constable, &c.

43 Eliz. c. 2. Suffex, ss. **W** Hereas I am informed, That F. C. hath been lawfully hired, and serv'd for one Year in the Parish of, &c. so that now he hath acquir'd a legal Settlement there: And whereas the said F. C. hath complained unto me, that he being discharged from his late Master, cannot find himself a Service, and is thereby destitute of any Means to support or relieve himself otherwise than by such Service or Labour, which he is willing to perform: These are therefore to require you, that upon Receipt hereof you set the said F. C. to work, and provide for him according to Law. And hereof fail not. Given under my Hand and Seal, &c.

Indiſ-

Indictment.

For using a Trade, not being Apprentice to it for seven Years.

Suffex ff. **J**UR' &c. quod F. C. nuper de Lewes in Comit' Suffex p'ed' Preoman, decimo octavo die Augusti Anno, &c. & continue postea usque diem caption' huius inquisition' scilicet decimum diem Octobris, Anno, &c. exister' per spatium trium mensium integrorum apud L. p'ed' in Com' p'ed' illicite pro lucro suo proprio usus fuit exercuit & occupavit Artem, Mysterium sive manual' Occupationem Pistoris (Anglice, a Baker) exister' Arte, Mysterio sive manual' Occupat' infra hoc Regnum Angliæ duodecimo die Januarii, Anno Regni Domine Elizabethæ nuper Regine Angliæ, &c. quinto usitat' & occupat' ubi rebera idem F. C. red'ni duodecimo die Januarii, Anno Regni dicte Dom' Elizabethæ nuper Regine Angliæ, &c. quinto supradicto non usus fuit aut exercuit legitime p'ed' Artem, Mysterium sive manual' Occupat' Pistoris p'ed' nec aliquam al' Artem, Mysterium sive manual' Occupat' nec unquam postea educat' fuit in p'ed' Arte, Mysterio sive manual' Occupat' Pistoris per spatium septem Annorum tanquam Apprentice (Anglice, an Apprentice) contra formam Statuti de dicto Anno quinto Regni dicte Domine Elizabethæ nuper Regine Angliæ, &c. in huiusmodi casu nuper edit' & p'obis' necnon contra pacem dicti Dom' Regis nunc Coron' & dignitat' suas.

The Defendant was indicted for using the Trade of a *Taylor*, not having served as an Apprentice to it seven Years *infra regnum Angliæ vel Walliæ*, and for this Reason it was quash'd; for if he had serv'd beyond Sea, or any where, it had been sufficient. P. 11 W.

The Statute of 21 H. 8. cap. 7. which makes it Felony for a 21 H. 8. c. 7. Servant to go away with his Master's Goods to the Value of 40 s. with an Intent to steal or imbezil them, doth not extend to Apprentices, but to Servants above eighteen Years old.

But the Goods must be deliver'd to them to keep; for if a Bond be deliver'd to keep, and a Servant receives the Money and goeth away, this is not Felony, because he did not receive it by the actual Delivery of the Master.

So 'tis if the Master deliver Cattle to the Servant, and he sell them in a Market or Fair, and goeth away with the Money. 3 Inst. 105.

An Indictment upon the Statute before-mentioned.

Suffex ff. **J**UR', &c. quod W. N. de H. in Com' p'ed' Gen' decimo octavo die Augusti, Anno Regni, &c. in Domo mansionali ipsius W. N. apud H. p'ed' in Comir' Suffex p'edict' deliberabit cuidam J. C. de H. p'edict' tunc serbienti ipsius W. N. p'ro uno Anno integro retento, ac etatis viginti Annozumi adtunc existen' quinque libras in pecuniis numeratis de bonis ipsius W. N. p'ropriis ad intentionem quod idem J. C. eadem salbo custodiret ad usum p'ed' W. N. tunc Magistri sui p'edict' tamen J. C. dicto decimo octavo die Augusti Anno supradicto (non existens tunc Apprenticius dicti W. N.) apud H. p'edict' in Com' p'ed' a Magistro suo una cum p'ed' quinque libris dicti W. N. tunc Magistri sui maliciose & felonice decessit, abiit & aufugit ea intentione ad furand' dict' quinque libras contra fiduciam in eo per p'efat' W. N. tunc Magistrum suum reposit' ac contra pacem dicti Domini Regis corzon' & dignitat' suas & contra formam Statuti, &c.

12 Ann.
Sess. 1. c. 7

And Note, By an Act made 12 of the late Queen, If any Servant purloins, imbezils, or makes away his Master's Goods, &c. to the Value of 40s. it is Felony without Benefit of Clergy: But this is not to extend to Apprentices under 15 Years of Age. Vide Felonies.

1 Salk. 380.
Nov 175.
Mod Cases
99. 122.
Mod. Cases
288

Indictment for that the Defendant at such a Day and Place quendam W. R. Serbum sive Apprenticium cuiusdam R. R. extra domum Shopam & serbitium p'ed' R. R. Magistri sui discipere & seipsum absentare illicite causabit allerit & procurabit, & quod adtunc & diversis diebus antea illicite sedurit eundem W. R. ad ducent' Carolina Matts valoris, &c. de bonis & catallis p'efat' R. R. extra domum & Shopam suam illicite capiend' & asportand' & illa adtunc & ibidem injuste cepit recepit & habuit sciens bona & catalla p'edict' esse Bona p'edict' R. R. & p'edict' W. R. esse serbum p'edict' R. R. the Defendant was found Guilty, but the Judgment was set aside, because *Inticing an Apprentice* to leave his Service, is a private Injury for which an Indictment will not lie, but an Action on the Case, per quod serbitium amisit. 'Tis true, an *Inticing to imbezel Goods* is indictable, but in this Case no Place was laid where the Goods were taken away.

Indictment for *Enticing an Apprentice to take away his Master's Goods*. The Defendant was convicted, but adjudg'd that this Indictment was ill, because it did not set forth that the Apprentice did *actually take away any Goods*, for it is not sufficient to lay an *Enticement*, without some *Act* done in Pursuance thereof. 'Tis true it sets forth that the Defendant did receive the Goods, which implies that they were taken away, but a Charge in an Indictment must be direct and certain.

Ap

Approber.

THIS is a Person, who being in Prison for the Fact for which he is indicted, and either arraigned upon it, or upon an Appeal, and there being a Coroner assign'd by the Court, confesseth that very Fact before him, and then impeacheth other Persons as Co-adjutors with him in the same Crime.

And so much Credit is given to this Confession, that Process shall issue out against the Offender, and he shall be arraign'd as if an Indictment by a Grand Jury had been found against him.

Armour.

IN 2 Ed. 3. the Statute of Northampton was made, That none should come with Force and Arms before the King's Justices, or his Ministers in executing of his Commands, nor go or ride arm'd in an Affray of the People, or by Night, or by Day before the King's Justices, or in any other Place.

The Punishment was Forfeiture of the Armour, and Imprisonment during the King's Pleasure. This Law was reviv'd Anno 7. R. 2. and afterwards Anno 20. R. 2. it was enacted, That it should be duly observ'd upon the Pains in the first Act mention'd; and as a farther Punishment, the Justices of Peace, who have Power to put the Statute of Northampton in Execution, might inflict a Fine upon the Offender.

My Lord Coke in his Exposition on the Statute saith, That the Commands of the King therein intended, are his Writs and Process of Law, which are to be executed by his Ministers; and therefore if any Person with Force resist them, the Sheriff is enabled *vim vi repellere* with the Force of the County. 3 Inst. 16.

The Party griev'd may have a Writ upon this Statute, directed to the Sheriff, who finding the Force, may make Proclamation to depart; and if they refuse, he may seize their Armour, and commit them. F. N. B. 54. 249. F.

But this Writ is now disused, because the Party could not be restor'd to his Possession thereby, and a speedier Remedy is given by the Statute of 8 H. 6. cap. 9. which you may see in Title *Forcible Entry*.

My Lord Coke farther tells us, That this Act had so good an Effect upon the People, that it was not put in Execution for above twenty Years after it was made; and then a Quarrel happening between Sir Thomas Pigott and Sir John Trevor, the first carried Arms secretly under his Garment, as well before the Judges of the King's Bench as others, for which he was committed 21 Jac. 15.

Arrest.

mitted by the Chief Justice, and his Arms taken from him, and not enlarged till the King's Pleasure was known.

And I think few Prosecutions have been made upon this Law since that Time; I remember but one, which was *Mich. 2 Jac. 2.* against Sir *John Knight*, for walking about the Streets at *Bristol* with a Gun, and coming to Church so armed: It was tried at the Bar in *B. R.* and the Defendant acquitted.

Who may arm themselves. Any Person may use Force and Arms in the Defence of his Person or House against Robbers, or against those who shall assemble to do him any Violence; or to suppress Riots; but the safest Way is to be armed in the Assistance of the King's Officers or Ministers of Justice.

**Who shall be disin-
ed.** The Armour of Recusants convict shall be taken from them by Warrant from four Justices of Peace at Quarter-Sessions; and yet they shall be charg'd to the Militia according to their Ability.

3 Jac. c. 5 If they conceal their Arms, or give any Disturbance in the Delivery, one Justice may commit them for three Months without Bail.

Any Justice may command Weapons to be taken from a Prisoner brought before him.

1 Jac. 2. 8. Arms, Munition and Gun-powder shall not be imported without the King's Licence, under Pain of Forfeiture of the Goods, and treble the Value, one Moiety to the King, the other to the Prosecutor, by Action of Debt, &c.

Those who obtain Letters Patent for sole making Arms or Gun-powder, and put the same in Execution, are made guilty of a *Præmunire*, and the Grants are void, any Clause of *Non obstante* notwithstanding.

Army and Militia. See Soldiers.

Arrest.

Who may be arrested. ALL Persons under the Degree of a Baron may be arrested by a Warrant from a Justice of Peace, for any Misdemeanour, or any Thing done against the Peace. *Dalton 406.*

A Peer may be arrested by a Writ out of *B. R.* for a Contempt or Breach of the Peace.

A Clergy-man, but not in Divine Service.

A *Feme Covert* for a Riot.

An Infant, if he can't find Sureties for the Peace, but not for the Breach of any Statute, unless he is therein charged.

The Manner of Arresting, Commitment, and by what Process. 'Tis no Arrest for a Constable having a Warrant to command the Party to appear before a Justice of Peace, but he must lay hold on his Person. *Dalt. 405.*

Where

Where an Affray is made, and the Offenders fly into another County, the Constable may pursue them.

* He may break open a Door to take an Offender; but then some Felony must be committed. *H. P. C. 93.*

Sessions may award a *Capias* against a Person indicted, and by Virtue thereof the Officer may break open Doors.

Commitment by a Justice must be to the common Gaol, by *Mittimus* under his Hand and Seal, containing the Cause; and it ought to conclude, *viz.* There to remain till he be deliver'd by due Course of Law; otherwise 'tis void. *H. P. C. cap. 94.*

A Sworn Officer needs not shew his Warrant.

In all Criminal Cases where any one is in Danger of Life or Member, any private Man may arrest another without Pre-sentment, Process, or Warrant; so likewise where a Felony is committed, every Person present must endeavour to take the Offender, or may be fin'd and committed; and in such Case, any suspected Person, tho' upon common Fame only, may be taken; and if he make Resistance, you may justify the Beating of him.

Offenders, by { Dangerously wounding a Man in an Affray.
Unlawfully hunting in Parks.
Keeping Guns, not qualified.
Night-walking.

All these may be arrested by any private Person; but then they must be brought to the Constable; and if he is not to be found, then to the Justice, in order to their Commitment. *Dalt. 408.*

A Justice of Peace may, at his Discretion, grant a Warrant to take such whom he shall suspect to be inclin'd to break the Peace. *Dalt. 409.*

So upon his own View he may commit those who offend against Penal Laws.

Herein any Person aiding him, may break open an House to apprehend a Felon, having a lawful Warrant; so likewise to apprehend one who hath dangerously wounded another; so where an Affray is in a House, and the Door shut, the Constable may break it open; so upon a forcible Entry and Detainer, either upon View of Justices, or upon an Inquisition taken before them; so may the Sheriff, upon an Outlawry in a Personal Action; so he may upon a Warrant for the Peace, or Good Behaviour, and generally in all Cases where the King is Party. *Dalt. 264. Moor 606.*

But he ought first to acquaint the Person of the Cause, and to desire the Doors may be opened.

If Complaint be made to a Constable of Felony done, or Blow given, though the wounded Person is not dead, if an Assault be made on himself, or where there is any Breach of the Peace done in his View, he may put the Offenders in the Stocks,

*But a private Person cannot break open a Door.

By a private Person, and for what Cause. *3 Inst. 118. Dalt. 408.*

Breaking open a Door by Officers of Justice, and in Aid of them. *H. P. C. 90.*

By a Constable without Process.

Stocks, or secure them in his own House till he can bring them before a Justice. *H. P. C. cap. 92.*

What is to
be done
when an
Offender
is arrested.

When brought before the Justice, if he hath Power by any Statute to bind him over, or to cause him to do any Thing, and he refuseth, he may commit him till he is conformable.

If he flie into another County, and is taken there, he shall be committed to Gaol, not where the Felony was done, but where taken.

Constable may put him in the Stocks for a reasonable Time till he can get Help to convey him to Gaol.

Cro. Eliz.
829.

Gaoler may make his own House a Gaol; but a Justice must not send him thither, but to a common Gaol, and the Gaoler cannot make his own House a Gaol above a Day and a Night.

At Common Law, the Gaoler could not put Irons upon a Prisoner; but by the Statute of *W. 2. cap. 11.* 'tis enacted, *That carceri mancipetur in ferris.*

22 & 23
Car. 2.
cap. 20.

By a late Statute, the Prisoner must not be carried to a Victualling-house without his Consent, so as to charge him with any Sum of Money for Meat or Drink, nor more taken for the Arrest than by Law requir'd; nor any Reward exacted for keeping him out of Gaol till he find Bail or agree; nor more taken for a Night's Lodging, or other Expences, than what shall be allow'd by the next Justice or Sessions.

In carrying
him to
Gaol.
Vid. Tit.
Constable.

This must be at his own Expences, (if able) otherwise at the Charge of the Town where taken, who may be distrain'd if they refuse

If the Prisoner refuse to be at the Charge, the Justice may direct a Warrant to the High Constable, or Petty Constable of the Town where he hath any Goods, to sell as much as will satisfy the Charges.

If the Gaoler will not receive him, the Constable must bring him to the Town where taken, who must keep him till next Assizes, and there the Gaoler shall be punish'd. *Dalt. 413.*

The Time
of Impri-
sonment.

Where Imprisonment is directed by any Statute, and no Time limited when the Offender shall be committed, it must be presently; so where 'tis not limited, how long he shall continue in Custody, there 'tis in the Discretion of the Court.

The Mar-
ner.

He must be kept *in salva & arcta Custodia*, and if the Gaoler suffer him to go Abroad at any Time, though he return to the Prison, 'tis an Escape, and the Gaoler may be fined; for Imprisonment is a Punishment of the Offender, as well as the Keeping of him to answer his Fault.

Artificer. See Apprentices.

Assault.

Assault is derived from the old *Latin* Word *Assultus*, which signifies a *Leaping on another*; so that *ex vi termini* it cannot be performed without the Offering some Hurt to the Person, as by Striking, &c. And Battery is the wrongful Beating another.

Justifiable.

As Parents have over their Children till they come of Age, for till then they may chastise them for Offences without Breach of the Peace.

As the Master hath over his Servant, the School-Master over his Scholars, a Gaoler over his Prisoners, and any Man over his Kinsman who is mad; or who, being at Liberty, attempts to do any Mischief.

He may strike another to defend his Person from being wounded or beaten.

If a Soldier hurt another by Misfortune or Negligence, and not wilfully; so if two agree to play at any Game, and one is hurt, 'tis no Breach of the Peace, because 'twas by Consent.

I may justify the Beating of another, who would do Mischief to my Wife, Father, or Mother; for I am bound by Law to protect the one, and I owe Obedience to the other.

So may the Wife justify the Beating one who would beat or assault the Husband; so may the Father or Mother any Person who would beat their Children.

A Servant may likewise justify the Beating another, in Defence of his Master, (*& e converso*) but not of his Master's Father or Mother, &c. because they owe no Obedience to them.

So where the Life of any one is in Danger by beating, or otherwise, any Person may endeavour to resist, and that by beating him who offered the Violence. *Dalt. 206.*

As if any would by Force wrongfully take them away, whether I have a Property in them, or a bare Possession only, 'tis justifiable to resist; but the Offender must not be wounded; and, if killed, 'tis Felony.

So 'tis if another endeavour to put me out of Possession of Land, or to turn a High-way, or to divert a Water-course, &c.

Indictment for an Assault.

Suffex ff. J. M. R. &c. quod T. P. de Parochia de H. in Com' pzed' Scissor, 30 die Januarii. Anno Regni, &c. apud Parochiam pzed' in Com' pzed' in & super J. O. in pace Dei & dicti Dom' Reg' adtunc & ibidem exister' vi & armis insultum fecit & ipsum J. O. Adtunc & ibidem verberavit vulneravit & male tractavit ita quod de vita eius desperabatur & alia enormia ei adtunc & ibidem intulit ad grave damnum ipsius J. O. & contra pacem dicti Domini Regis nunc Cozonam & Dignitatem suas.

Sid. 140.

It has been observed, That if the Words, *Vi & armis*, are not put immediately before the *Insultum fecit*, that the Indictment is naught, though these Words are in the Beginning of it; but this seems to be a Nicety grounded upon no Manner of Reason.

Sid. 165.

I shall conclude this Title with a remarkable Case, which was thus: One *Macbell* courted the Sister of Mr. *Gott*, a Barrister of *Greys Inn*, and a Justice of Peace for *Suffex*; and he not consenting to the Match, was sent for to an Ale-house by Mr. *Macbell*, and one *Tully*; when he came thither, *Tully* went out of the Room to prevent any Person from assisting Mr. *Gott*; whom *Macbell* beat so much, that he broke his Arm: And for this Battery, he and *Tully* were indicted and found guilty; and *Macbell* was fined 1000 l. and *Tully* 500 l. and both committed for a Month without Bail, and to find Sureties for their good Behaviour for seven Years.

Measure of Billets, &c. See Fuel.

Measure of Bread. See Weights, &c.

Attainder and Conviction.

1. What it is, and how it differs from Conviction.

THESE Words are used promiscuously, and sometimes one is signified by the other; as by the Statute of 3 H. 7. cap. 1. 'tis enacted, That if any Man be acquitted of Murder upon an Indictment, or *attainted*, an Appeal may be brought if the Benefit of Clergy is not had; here the Word *Attainted* must signify *Convicted*, because after Attainder 'tis too late to have the Benefit of Clergy.

But in Propriety of Speech, a Man is said to be *attainted* when after Conviction Judgment is passed by the Court; and he is said to be *convicted* when he confesseth the Fault, or is found guilty by a Jury, and before Judgment given.

5 H. 4. c. 6.
13 H. 4. c. 7.

Yet

Yet a Man may be attainted upon an Outlawry, and convicted in many Cases by his own Confession, and without a Verdict, as generally upon Penal Laws, viz. a Recusant indicted at Sessions, and Proclamation made for him to surrender himself to the Sheriff, if he neglects to appear at the next Sessions, the Record of his Default is a Conviction; and so in many other Cases.

11 H. 6. c. 11.
3 Jac. c. 4.

The Punishment of a Person attainted, viz.

2. The Punishment of a Person attainted,

Loss of Life.

Corruption of Blood.

Forfeiture of Fee-simple Estate from the Time of the Offence, so that the King shall have *Ann. Diem & vastum* therein, and then it goes to the Lord of the Fee by Escheat, but the Lord may compound with the King, and have it presently.

Forfeiture of Goods from the Time of the Attainder only. 1 Salk. 85.

As to Corruption of Blood, this Case happened, *W. R.* having an Estate for three Lives was attainted on the Statute 8 & 9 Will. for Treason in counterfeiting the Coin, by which Statute Corruption of Blood is saved, and for that Reason it was a Question whether the Lands were forfeited or not, the Grantee of the King brought a Bill in the Exchequer to redeem (the Lands being mortgaged) and had a Decree from which there was an Appeal to the House of Lords, where the Judges held that the Lands came to the King as an *immediate Forfeiture*, which was a distinct Penalty from Corruption of Blood, so that the Corruption may be saved, and the Forfeiture still remain.

1 Salk. 85.

Adjudged that an Attainder of Felony makes a Forfeiture of the Estate to the Lord, only by Way of *Estreat pro defectu Tenentis*, and the not Descending is the Consequence of Corruption of Blood.

Before Attainder.

{ He may sell his Goods for his Maintenance in Prison. *Dalt.* 363.
If he is attainted of Felony and pardoned, tho' he cannot be indicted for any Felony committed before the Attainder, yet an Appeal of Robbery lies against him for a Robbery committed before, because the Party may have Restitution upon an Appeal.

3. What may be done by or against the Party before or after, &c.

'Tis true, he may be indicted for a Treason done before the Attainder of Felony, because 'tis not only an Offence of a higher Nature, but the King, upon the Conviction, will be entitled to the Forfeiture of the Lands; however, if such Land was first vested in the Lord by the Attainder in Felony, it shall not be divested by any Conviction for a Treason committed before such Attainder, so as to give the King a Title.

F

If

1 Leon. 5. If the Husband makes a Feoffment in Fee, then commits Treason, is pardoned and dies, his Widow shall not have Dower against the Feoffee, because she is barred by the Attainder, so long as it remains unreversed.

After At-
tainder.

A Grant of Goods or Lands shall bind all Persons but the King, and the Lord of the Fee. His Body is his own till Execution, and if he is killed before that Time, his Wife may have an Appeal. He may be taken in Execution at the Suit of any Subject for Debt, but may be executed, notwithstanding he may purchase Lands in Fee.

4. What is to be done; with his Goods. At Common Law, if a Felon was found guilty before the Coroner, or that he did fly; the Sheriff or Coroner might seize his Goods before Trial for the Use of the King, which ought to be appraised and left in the Custody of the Neighbours where the Offender lived.

The Law was the same if he did not fly, but was indicted; but then after the Appraisment they ought not to be removed out of his House before Attainder, if the Offender could give Security that they should not be imbezilled; if not, then they were to be delivered to the Neighbours, who ought to keep them during his Imprisonment, and he was to have reasonable Maintenance out of them till Conviction. *Dalt.* 362.

By the Statute of 1 R. cap. 3. The Common Law is in this Particular confirmed, and the Party imprisoned shall recover double the Value of his Goods seized by any Officer, or taken out of his House before Conviction. *Dalt.* 363.

After Conviction, or *fugam fecit* returned by the Coroner, all the Goods, the Corn growing, the Profits of the Fee-simple Estate for a Year and a Day, and the Issues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the King; and the Party to whom the King shall give the same may bring an Action in his own Name to recover them.

5. Attainder by Outlawry. If 'tis erroneous, the Party may appear at any Time, and reverse it by Writ of Error.

At Common Law, it was an Error in Fact for the Party outlawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which the Outlawry might be reversed in all Cases.

3 & 6 Ed. 6. cap. 11. The Advantage of this Error is taken away in Treason, by the Statute of 6 Ed. 6. but not wholly, for there is a Proviso, That if the Person shall yield himself to the Chief Justice within a Year and a Day after the Outlawry pronounced; he shall be admitted to traverse the Indictment.

Badgers.

67

Sir *John Hawles* tells us, that no Judgment was ever yet given upon Construction of this Statute before that of Sir *Thomas Armstrong*, in the Reign of *Jac. 2.* because a Trial was never before that Time denied to a Person outlawed, if he came within the Time limited.

'Tis true, Sir *Thomas Armstrong* did not yield himself, but was taken in *Holland*, but still within the Year; so that it seemed a great Hardship to deny him a Trial upon the Nicety of a Word.

Indictment for seizing the Goods of a Felon before Conviction.

Sussex, ff. **J**UR' &c. quod cum quidam J. O. nuper de H. &c. in Com' pzed' Labourer, capt' fuit pro suspitione felonie per ipsum perpetrat' (viz.) pro eo quod pzed J. O. felonice cepit unum equum de bonis & catallis cujusdam F. O. apud H. pzed' in Com' predict' & quod postea pzetat' J. O. ductus fuit coram G. C. Arm' un' Justiciar' Domini Regis ad Pacem, &c. & per ipsum commissus fuit Gaole dicti Domini Regis infra Com' predict' pro suspitione felonie pzed' super quo quidam B. K. Constabularius Paroch' de H. pzed' adtunc & ibidem cepit, &c. de bonis & catallis pzed' J. O. sic commiss. antequam convict' fuit de feloniam pzed' contra formam Statut. &c.

Attaint. See Jury.

Badgers.

Transporter, Buyers, Carriers, Laders, Kidders,	}	either of	}	Butter, Cheese, Corn or Grain.	}	1. Their Qualifications. 2. Forfeitures. 3. Licences.	§ Elin. c. 12.
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Must be a married Man and Housholder, of thirty Years of Age, licensed in Sessions of the County where he hath lived three Years, under the Hands and Seals of three Justices, *Quo* ver, like *Qualifica* tion.

This is to be in Force for one Year, and no more, and must be entred by the Clerk of the Peace, &c. who for writing it hath 12 d. and for Entry 12 d.

He must give Recognizance in Sessions, that he will not en-gross; for writing whereof he is to pay 8 d. and for Entry 4 d. a. Forfeits

He who hath no Licence, forfeits 5 l. to be divided between King and Prosecutor.

'Tis to be recorded in Sessions by Inquisition, Verdict, or Oath of two Witnesses; the Process is an Estreat for the King's

*Which see in Title. **Moiety**, and a * *Capias* for the **Moiety** of the **Prosecutor**, which must be in the **Name** of the **King**, and the *Teste* by two **Justices**; and there must be three **Weeks** between the *Teste* and the **Return** thereof.

A Licence for a Badger of Corn.

3. Licences. **Suffex, ff.** **A**T the **General Quarter-Sessions** of the **Peace**, held at **Three Ju-**
stices in **L.** for the **East Part** of the **County** aforesaid, this
Sessions. present 9th Day of **July**, in the 5th Year of the **Reign**, &c. **R. H.**
 * Cannot is licensed and appointed by the **Justices** in their said **Sessions**, to be a
 buy Corn **Common Badger**, **Lader**, **Kidder**, **Carrier**, or **Buyer** of **Corn** or **Grain**
 out of **Mar-** in any * **Market** or **Fair** whatsoever, and the same to convert into
 ket to sell **Meal**, and to carry it to the **City** of **London**, or the **Suburbs** thereof,
 again, or to any other **Fair** or **Market**, so that he use the same according to
 without the true **Meaning** of the **Statute** in the same **Case** made and provided
 express against **Forestallers**, **Regrators** and **Ingrossers**, and not therwise. This
 Words in **Licence** is to continue for one **Year** next ensuing. In **Witness** where-
 the **Licence** of, &c.
 under **Pain**
 of 5 l. ut.
 prius.

A Licence for a former Higler.

Three Ju- **Suffex, ff.** **A**S in the former **Licence**, &c. to be a **Common Higler**,
stices. **Lader**, **Kidder**, **Carrier**, **Buyer** and **Seller**, of **Hens**,
Chickens, **Capons**, **Eggs**, and any other dead **Vittuals**, (except such
 which are prohibited by any **Law**) in any **Market** or **Fair** whatsoever,
 and to use the said **Office** and **Dealing** aforesaid, according to the **Sta-**
tutes in that **Case** made and provided; this **Licence** to continue only for
 a **Year** next ensuing, and no longer. In **Witness** whereof, three of
 the **Justices** of the **Peace** for the **County** aforesaid, then present in the
Sessions aforesaid, have set their **Hands** and **Seals** to this present
Licence. **Witness**, &c.

The Recognizance and Condition, &c. taken in the Sessions.

THAT he shall not by **Colour** of his **Licence** **forestall** or **engross**,
 or **practise**, or do any **Thing** contrary to the true **Meaning** of
 the **Statutes** made against **Forestallers** and **Regrators**, or any **Thing**
 therein contained.

Bail.

1. In what
 Cases al-
 lowed.

AT **Common Law**, **Bail** was allow'd for any **Offences** ex-
 cept **Murder**; but now by the **Statute** *W. 1. cap. 15.* 'tis
 directed where it shall be taken, and where not, which seems
 to be a **Rule** to this **Day**, because the **Statute** 1 & 2 *P. & M.*
cap. 13. which gives **Justices** of **Peace** Power to **bail**, hath **Re-**
lation to this very **Statute**. 2 *Inst.* 190.

My Lord Coke tells us, That in those Days Men were bail'd by the Writ *De homine reglegiando*, and by the Writ *De Odio & Atia*, both which are now disused.

These Writs were directed to the Sheriff, under whose Custody the Person was detain'd; and he was usually replevied, that is, Pledges were taken for him in the County-Court in all Cases, except for the Death of a Man, and except a Person committed by the personal Command of the King, though the Commitment should be unlawful; a Person committed by the Judge for any Cause proper to his Judicature, or for the Forest; in these Cases the Sheriff was not to intermeddle in his Court, but the proper Remedy was by a *Habeas Corpus*, and Justice was done to the Party in the great Courts at *Westminster*.

Now the Reason why Bail was taken in all other Cases, was, because *Stabat indifferenter* upon a bare Accusation, whether the Party was guilty or not; and therefore by that Statute a Person outlawed was not to be bailed, because he is attainted in Law; but if upon the *Capias Utlagatum* he pleads a *Misnomer*, or alleges any Error in the Proceedings, he may be bail'd.

A Person abjuring, is attainted by his own Confession; Approvers confess the Felony to be actually done by themselves; a Person taken with the Thing stoln: In all these Cases *non stat indifferenter*, nor for breaking a Prison; for it may be presum'd that an innocent will not do it. Notorious Felons; he that is accused by an Approver; one who sets an House on Fire; Counterfeiting Money; both which were Offences at Common Law, and so was Counterfeiting the Great Seal; a Person excommunicate; for antiently Men were excommunicated only for Heresies, and not for petty Offences; and if the Bishop certified the Excommunication into the *Chancery*, and the Party was taken upon the *Capias*, he was not to be bailed, unless he gave Caution *Parere Mandatis Ecclesie*: One guilty of an open and manifest Offence, and for Treason. All these were exempted from Bail by this Statute, but might be bail'd in *B. R.*

Bail refus'd, where the Person isailable by Law, is a Misdemeanour, and fineable. *H. P. C. 97. Style 182.*

To Accessaries thereunto, before and after the When al.
Offence, until the Principal is convict. *Dalt. 381.* lowed in
Aiding Felons, suspected to be done, and not if Criminal
it be actually done; but it must be by two Ju- Cases.
stices, *Quorum unus*, and they must be both *3 H. 7. c. 3.*
present when they bail him, and they must *1 & 2 Phil.*
take the Examination in Writing; which, to- *c. 13.*
gether with the Recognizance entred into by
the Witnesses to prosecute, must be certified
at next Assizes: Attainted thereof by Out-
lawry, if he bring a Writ of Error, *B. R.* may
bail him. *H. P. C. 101.*

'Tis allowed
in Felony.

Bail.

In Larceny.

Persons indicted thereof before the Sheriff, or under the Value of 12 d.

In Manslaughter.

This isailable, by the Statute 1 & 2 Phil. & M. cap. 13. by two Justices, *Quorum unus*, who must be present when they take the Bail, and it must be after Examination; but Manslaughter is notailable if the Fact is confessed, or 'tis certainly known that he killed the Person, for it must stand *indifferenter* if Bail is allowed; and therefore if it be found Manslaughter upon the Coroner's Inquest, tho' no Indictment is preferr'd, King's Bench would not bail, for the Statute saith, That Bail shall be allow'd in Manslaughter where the Party isailable by Law; which implies, that 'tis not to be allowed in all Cases. 1 Rol. Rep. 268. *Poine's Case*.

1 Rol. Rep. 268. *Poyné's Case*. But of late some Doubts have been made, Whether a Man can be lawfully bailed for Manslaughter; tho' my Lord Hale tells us, if it be a *Non liquet*, whether the Party accused did the Fact, two Justices may bail him.

Likewise, if a dangerous Blow is given, the Person may be bailed till the other is dead.

5 Mod. 322. An Indictment was found against a Feme-Covert at a Quarter-Sessions in *Norwich* for *Petit Treason* and Murder of her Husband, she was brought to the Bar and mov'd to be bailed, and it appearing upon *Affidavits* that the Prosecution was malicious, nothing being done either upon the Indictment or Coroner's Inquest, she was bailed.

1 Salk. 103. Colonel *Dorington* was committed to the Tower for High Treason, and one *Fitz-Patrick* assisted him to escape, for which he was committed by the Privy Council; and being brought up by *Habeas Corpus* was bailed, because there was a Sessions between this Time and the Time of his Commitment, and no Prosecution.

1 Salk. 104. Where a Man is committed for *Forging Endorsements* on Bank-Bills, which is not Felony (tho' the Forging the Bill it self is) therefore he may be bailed, it being only a Misdemeanour.

1 Salk. 104. The Defendant was found guilty of Murder on the Coroner's Inquest, yet B. R. may bail him, because the Coroner proceeds on Depositions taken in Writing, which the Court may inspect.

In Sessions Process.

Commitment thereon upon an Indictment against any Penal Statute, by which Bail is not prohibited, may be bailed by two Justices, *Quorum unus*.

Against

Bail.

71

- In Sessions Process. { Against the Party to appear upon an Indictment for a Trespass, one Justice may bail. *Dalt.* 382.
- InTrespasles { Where Life or Limb is not in Danger after an Indictment and Process thereon, the Party may be bailed by two Justices, *Quorum unus.* *H. P. C.* 100.
- Accessaries. — In Treason, *per Stat. W. 1. cap. 15.*
- Abjuring. { The Realm, because they are guilty by their own Confession. 2. Bail taken away. by Statutes.
- Accomptants { Found in Arrears before Auditors, till Satisfaction made.
- Ale-house-keepers. { Without Licence, the second Offence being Commitment to the House of Correction for a Month; suffering Tippling contrary to 1 *Fac. c. 9.*
- Appeals. — Of Death, not bailable. *H. P. C.* 103.
- Approvers. { These are Men who have committed Felony, and confess it; but this doth not concern Justices of Peace, any otherwise than to take his Confession and commit him, and send his Warrant for those accused. *W. 1. cap. 15.*
- Armour. { Persons riding armed, contrary to the Statute of *Northampton*, committed by Justices, are not bailable: Concealed by a Recusant convict or disturbing the Delivery of it, one Justice may commit for three Months without Bail.
- Arrest. { Procured in the Name of another; convicted thereof, is to be imprison'd six Months.
- Bastards. { Father or Mother not performing Justices Order; Mother to House of Correction for first Offence for a Year.
- Breakers. — Of Prisons. *W. 1. cap. 15.*
- Bridges. { Surveyors and Collectors of Money for repairing them, refusing to account. 22 *H. 8. cap. 5.*
- Burning. — Houses. *W. 1. cap. 15.*
- Church. { See Recusants.
{ Refusing to be Overseers thereof.
- Cloth. { Convicted for making deceitful Cloth, if the Party hath not wherewith to be distrained. *Dalt.* 385.
- Coining. — False Money. *W. 1. cap. 15.*
- Commission. { Of Rebellion out of *Chancery*; Persons taken thereon. *Dalt.* 382.
- Conics. { Killing them in enclosed Grounds, three Months Imprisonment. 3 *Fac. c. 13, 22, 23 Car. 2. c. 25.*

Bail.

- Constables. { Neglecting to levy Forfeitures for Abuses in Alehouses, and not having any Thing of their own, upon which to distrain 40 s. for their Neglect.
- Constables. { Neglecting to whip Trespassers in Orchards and Woods, by the Command of the Justices.
- Counterfeit-
ing. — Great Seal, &c. *W. 1. cap. 15.*
- Deer. { Killing and Hunting, contrary to Stat. 5 Eliz. cap. 21. committed for three Months.
- Deer. { Pulling down Pales in the Night; where red or fallow Deer are enclosed, three Months Imprisonment. 3 & 4 *W. & M. cap. 10.*
- Dogs. — See Hunting.
- Dyers. — Convicted for using Logwood,
- Engrossers. { Forfeit 20 s. for each Offence, or to be committed for two Months.
- Excommuni-
cate Persons. { Taken by the *Capias*. *Dalt. 316. West. 1 cap. 15.*
- Felons. { Notorious, viz. Those who are taken with stolen Goods. *W. 1. cap. 15.*
- Felons. { Those who are taken freshly by Hue and Cry *H. P. C. 101.*
- Felony. { Actually done, though it doth not appear that the Accus'd is guilty. *H. P. C. 98.* Attainted or convicted thereof by Confession or Indictment Acquitted within a Year. Not to be bail'd but at Discretion. That an Appeal may be had against him. 3 *H. 7. c. 1. H. P. C. 103. W. 1. c. 15.*
- Fesants. — See Partridges.
- Fish. { Destroyers of Ponds, three Months Imprisonment, and good Behaviour for seven Years.
- Forgers. { Of Deeds, Wills, or Writing sealed, or Court-Rolls, and those who assent to it; those who publish it knowingly, viz. Imprisonment after Conviction for Life, where any Man's Estate of Inheritance might have been defeated.
- Forestallers. { Forfeit 20 s. for each Offence, or to be committed for two Months.
- Fowl. { Shooting at, or destroying Duck, Fesant, Hern, Mallard, Partridge, Pidgeon or Teal, by Persons unqualified, viz. not having Estate of Inheritance, or for Life, in their own or Wife's Right, of 100 l. per Ann. or Lease of 99 Years of 150 l. per Ann. 22 & 23 *Car. 2. cap. 25.* Commitment for three Months, unless pay 20 s. for every Fowl to the Use of the Poor.

The

- Fraudulent Conveyances.** { The Parties.
Those who put them in Suit. { Commitment
Those who assign'd Lands or Goods so to them convey'd, knowing thereof. } for half a Year after Conviction.
- Gaming.** { Those who keep such Houses.
Those who play at unlawful Games ; Commitment, till they find Sureties not to offend again. }
- Guns.** — See *antea* Fowl.
- Hares.** { 1. Those who shoot, kill or destroy them.
Tracing them, or coursing them in the Snow.
Taking them in any Engine ; Commitment for three Months, unless he pay 20 s. for every Hare, to the Use of the Poor.
2. Keeping Grey-Hounds, or Dogs for Coursing Hares, unless he have 100 l. a Lease for Life of 30 l. *per Ann.* or be worth 200 l. in Goods : Commitment for three Months, unless he pay 40 s. to the Churchwardens, for the Use of the Poor. 1 *Fac. cap. 27.* }
- Hatters.** { Taking above two Apprentices, or one for less than seven Years ; Commitment for one Month. 8 *Eliz. cap. 11.* }
- Hawks.** { Taking them or their Eggs out of the Grounds of another ; three Months Imprisonment upon Conviction, and then to find Sureties for Good Behaviour for seven Years, or to remain in Prison till they find such Sureties. }
- Hawking.** { Between 1 *July* and 31 *August* ; Commitment for one Month ; unless he pay 40 s. for every Hawking, and 20 s. for every Feasant or Partridge kill'd. 7 *Fac. cap. 11.* }
- Highways.** { Not paying the Forfeitures collected for Repairing or Amending them ; Commitment till paid. }
- Hunting.** { Clergy-man not having 10 l. *per Ann.* } Keeping Dogs to hunt, convicted, at Sessions ; committed for a Year.
Lay-man, not having 40 s. *per Ann.* }
Those who keep Grey-hounds, not having sufficient Living, being convicted before two Justices ; Commitment for three Months, unless he pay 40 s. 1 *Fac. cap. 27.*
And killing Deer and Conies in enclosed Grounds ; Commitment for three Months.

Who

Bail.

- In-keepers. { Who shall not sell Hay, Oats, Beans, Provender, or other Viſuals for Man or Beaſt, for reaſonable Gain; convicted the ſecond Time; Commitment for one Month. 21 *Fac. cap.* 21.
- Labourers. { Going from Work before finiſh'd; Commitment for a Month.
- Masters. { Giving more Wages than aſſeſs'd by the Juſtices; Commitment for ten Days.
- In Man-ſlaughter. { After the Confeſſion of the Offender. 2 *Inſt.* 187. *Se defendendo*, notailable by Juſtices of Peace, but B. R. may bail him. *H. P. C.* 99, 161.
- In Murder, 'tis *Corpus pro Corpore*. { Notailable at Common Law; yet it hath been allow'd by B. R. and adjudged, That the Statute of *W. 1. cap.* 15. ſhould receive a favourable Conſtruction, according to the Diſcretion of the Judges, and as the Circumſtances of the Caſe require. *Latch.* 12.
- And therefore one *Andrews* being outlaw'd for Murder, did 14 Years afterwards bring a Writ of Error, and was bailed. *Style* 94.
- So two were committed upon Suſpicion of Murder, and when thoſe who actually had done it, confeſs'd at their Execution, the other who were imprifon'd were bail'd. *Style* 96.
- Acquitted thereof upon an Indiſtment, not to be bail'd till after a Year and a Day, that the Party may bring his Appeal. 3 *H. 7. cap.* 1.

1 *Salk.* 104. The Defendant was indiſted for *Murder*, the Court would not bail him upon *Affidavits* of the Evidence, becauſe that might diſcharge the Proſecution.

Ibidem. So where a Man was found guilty of *Murder* by the Grand Jury, the Court will not bail him, becauſe they cannot have Notice what Evidence was before the Jury, which by their Oath they are bound to conceal.

1 *Salk.* 102. The Defendant was indiſted for *Murder* and on the Statute of *Stabbing*, and the Jury found him guilty of *Manſlaughter* and a Special Verdict, as to the Reſt; he mov'd to be bailed, but it was deny'd; for 'tis never granted where a Man is found guilty of *Manſlaughter*, 'till Clergy had: 'Tis true it was allow'd in *Liſle's* Caſe, but he pray'd his Clergy which is as much as he could do.

It has been deny'd where the Defendant was found guilty of *Manſlaughter* on the Coroner's Inqueſt, for the Statute of *W. 1. cap.* 15. is, That no Bail ſhall be taken; but that muſt be intended, No Ordinary Bail; for the Statute 1 & 2 *Pb. & M. cap.* 13. is, That Bail ſhall be taken where the Party isailable by Law in *Manſlaughter*, by which it appears that he is notailable

baillable in all Cases of Manslaughter; as for Instance, if he confess the Fact, or if it is notorious.

- Must. { Those who absent, or who do not bring the best Furniture; Commitment for ten Days.
- Oath. { Those who refuse to take the Oath of Allegiance, being tender'd, Commitment till the next Assizes or Sessions, being above the Age of 18 Years.
- Partridge. —See Fowl.
- Pidgeon. —See Fowl.
- Perjury. { In any Court of Record, or Court-Baron; Commitment for six Months.
- Physicians. { Committed by President and College in London, must continue there, till discharg'd by President and College.
- Poor. Things relating to them. {
 - Refusing to pay Rates for them, and no Distress to be taken; Commitment till paid, and Charges.
 - Overseers refusing to make their Account, or to pay over to new Overseers what remains in their Hands; Commitment till perform'd.
 - Negligent in their Office, forfeits 20 s. and having no Distress to be taken, Commitment till Forfeiture paid.
 - Parents refusing to relieve Children, as the Justice shall assess in Sessions, Forfeiture 20 s. per Month; and having no Distress to be taken, Commitment till paid.
 - Common, &c. Minister, if beneficed, depraving it; Commitment for 6 Months.
 - Second Offence; Commitment for a Year.
 - Third Offence; Commitment for Life.
 - If not beneficed, first Offence, Commitment for 6 Months; but by 1 Eliz. cap. 2. 'tis for 12 Months.
 - Second Offence for Life.
- Prayer. {
 - Any other Person forfeits 100 Marks to the King; and if not paid within 6 Weeks after Conviction, Commitment for a Year.
 - Second Offence, 400 Marks; and if not paid *ut supra*, Commitment for a Year.
 - Third Offence; Imprisonment during Life.
 - Being present at any other Form; First Offence, Commitment for 6 Months: Second Offence, 12 Months: Third Offence, for Life.

Disturbers

Bail.

Preachers.

Disturbers of them in the Time of their Sermons; and such who aid or procure such Disturbance; they who rescue the Offender, may be committed by one Justice upon a bare Accusation; 6 Days afterwards, two Justices having examin'd the Fact, may commit him for three Months, &c. 1 *Mar. cap. 3.*

Recusants.

Suspected to be a Jesuit, or Seminary Priest, and being examin'd, refusing to answer; Commitment till he answer directly.

Suspected of Recusancy, and refusing to answer a Justice upon Oath, whether so or not, may commit till next Sessions or Assizes.

A Woman Recusant Convict, and not conforming, being committed, must remain there till she conform.

Woman or Child, under 21, going beyond Sea without Licence, the Master of the Ship must be committed for a Year.

Refusing to discover their Armour, or they or any other disturbing the Delivery of it, to Persons who have Authority to seize; Commitment for three Months. 3 *Fac. cap. 5.*

1. Impugning the King's Authority in Ecclesiastical Causes. 2. Perswading others to it, or from coming to Church. 3. Meeting at Conventicles, under Colour of Religion. 4. Or perswading others to meet there. Commitment till they conform and make an open Submission and Declaration of their Conformity.

Absenting from Church on *Sunday*, and no Distress to be had; Commitment till Forfeiture is paid.

Above the Age of 16, and absenting for a Month; Forfeiture 10 *s.* per Month, or be committed till paid. 23 *Eliz. c. 1.*

Being a Recusant, or not allow'd by the Ordinary; and being convicted, Commitment for a Year.

Keeping him, or any other Servant in the House, and not coming to Church for a Month, the Master of such House forfeits 10 *l.* per Month.

Rogues.

Incorrigible, being committed, must continue in Custody till next Sessions.

Teaching

- | | |
|--|---|
| School-Masters. | { Teaching Youth without Licence; (<i>ut prius</i>) for the first Offence, Commitment for 3 Months; and for the second Offence, like Commitment, and forfeits 5 <i>l.</i> per 13 & 14 <i>Car. 2. c. 4.</i> |
| Seal. | —Great, counterfeiting thereof. <i>W. 1. cap. 15.</i>
{ Departing before their Term is ended, unless for a Cause to be allowed by a Justice of Peace, or at the End of the Term, without a Quarter's Warning before two Witnesses, may be committed till he give Security to serve. |
| Servants,
<i>Vide</i> Servants and Apprentices. | { Refusing to serve for the Wages appointed by Justices, or having promis'd to serve, and refuse; Commitment until he shall be bound to serve.
{ Taking more Wages than set by the Justices; Commitment for 21 Days.
{ Women above 12, and under 40, and unmarried, refusing to serve, may be committed till they will be bound to serve. 5 <i>Eliz. cap. 5.</i> |
| Sheriffs. | { Not electing Knights of the Shire in their full County between the Hours of eight and eleven in the Morning, or returning them contrary to the Statute; Commitment for a Year.
{ Making any Warrant for an Arrest, without the original Process or Writ; committed till he pay 10 <i>l.</i> to the Party grieved, and his Costs and Damages, and 20 <i>l.</i> to the King. |
| Suit. | { In another Man's Name, there being no such Person, or without the Consent of the Person, convicted by two Witnesses, Commitment for two Months, paying treble Costs and Damages to the Party grieved. 8 <i>Eliz. cap. 2.</i> |
| Transportation. | { Of selling Horse or Mare without Licence forfeits them, and 40 <i>l.</i> for each, &c. between King and Prosecutor, and Commitment for a Year. 1 <i>Ed. 6. cap. 5.</i>
{ Of Sheep alive, he that brings, delivers, sends, receives, or takes them, forfeits all his Goods, and must have his Hand cut off in some open Market, and be committed for a Year; the second Offence is Felony. 8 <i>Eliz. cap. 3.</i> |
| Witches. | { And others, who shall take upon them to hurt another, though 'tis not done:
{ Or to provoke Love:
{ Or shall hurt any Cattle:
{ Commitment for a Year after Conviction. 17 <i>a. 22.</i>
<div style="text-align: right;">Taking</div> |

Women.

Taking them unmarried, and under Sixteen, out of the Possession of their Father or Mother, and against their Wills; or out of the Custody of the Person to whom the Father hath devis'd it, except such Taking shall be in the Behalf of the Master or Mistress of such Child, or Gurdian in Socage; two Years Imprisonment.

If deflower such Child, or contract Marriage without the Consent of the Father; and if he is dead, then of the Mother; convicted thereof, Commitment for 5 Years, or pay such Fine as B. R. shall assess, to be divided between the King and Prosecutor. 4 & 5 Phil. & Mar. c. 8.

By whom, and in what Sum. Two Justices of the Peace by particular Statutes, viz. by 1 R. 2. cap. 3. 3 H. 7. cap. 3. 1 & 2 Phil. & Mar. cap. 13.

The Sureties and Sum are left to the Discretion of the Justices, where no Sum certain is appointed by Law: But if the Crime be Suspicion of Felony, they must take very sufficient Persons for the Appearance of the Party, and bind them in a good Sum.

And if the Justice, at any Time before Appearance, shall think the Securities taken not sufficient, they may compel the Party to give better, or commit him.

The Sureties likewise may bring the Offender before the Justices of Peace, and desire to be discharged upon his Commitment, if they are of Opinion that he will run away.

The Justices may examine the Sureties upon Oath. *Dalt.* 375.

Justices may bail any Prisoner committed for an Offence, of which they are competent Judges, and therefore they cannot bail Persons arrested by Writs out of the Courts at Westminster in any Personal Action; for they cannot hear and determine such Actions.

Poph. 96. And if they bail any Person who is notailable by Law, they ought to be fined. See Stat. W. 1. cap. 15.

A common
Recogni-
zance for
Bail.

Suffex ff. Memorand' quod 1 die Maii Anno Regni, &c. A. B. de, &c. & C. D. & J. K. de, &c. personaliter venerunt coram nobis E. F. & G. H. duobus Justiciariis dicti Domini Regis ad pacem suam in Com' suo predict' conservand' assignat' & recognoverunt se debere eidem Domino Regi & Monet' Mag' Bz. & uterq; predictoꝝ. C. & J. decem libras & catallis suis separaliter fieri & levari ad opus & usum dicti Domini Regis heredum & successorum suorum si defalt. fieret

5 Ed. 1. c. 15. *Notis,*
27 Ed. 1. c. 3.
1 Ric. 3. c. 3.
3 H. 7. c. 3.
1 & 2 P. & M. c. 13.
1 Inst. 184.
31 Car. 2. c. 2.
1 Rol. 268.
Vide post. in perfozmatione Conditionis infraſcript,

Note, If it be taken before one Justice, then for *duobus Justiciariis*, say *uno Justiciario*, and the Year of the King being expressed, *Anno Domini* may be omitted.

Sufflex ff. **M**emozand' quod 24 die Septemb' Anno Regni, &c. venerunt coram nobis R. B. & H. P. duobus Justiciariis dicti Dom' Regis ad pacem in Com' pzed' conserband' assignat' necnon, &c. apud L. in Com' pzed' T. P. & W. A. de, &c. in Com' pzed' Yeomen, & ceperunt in Ballium usque ad proximam Gaole deliberation' in dicto Com' tenend' quendam J. O. de, &c. Labourer captum & detentum * pro suspitione cuiusdam Felonie per ipsum, ut dicitur, perpetrat' & assumpser' super se scil' pzed' T. P. & W. A. separatim sub pena 50 l. bone & legalis monete Anglie & pzedict' J. O. assumpsit pro seipso in Centum Libris similis monete de bonis & catallis, terris & tenementis eorum & cuiuslibet eorum ad opus dicti Domini Regis hered' & successorum suorum lebant' si pzedat' J. O. ad eandem proximam Gaole deliberation' non personaliter comparebit coram Justiciariis dicti Dom' Reg' ad dictam Gaole deliberation' assign' ad standum recte de Felonia pzedict' & ad respondend' dicti Dom' Regi tunc & ibidem desuper omnibus que illi obijcientur. Dat. sub sigillis nostris, &c.

The Condition of this Recognizance is such, That if the within bounden A. B. do personally appear before his Majesty's Justices assigned to keep the Peace in the within named County of S. at the next General Sessions of the Peace to be holden for the said County at M. in the County aforesaid, (or before his Majesty's Justices of Gaol-Delivery, at the next General Gaol-Delivery to be holden for the within named County of S.) then and there to answer our said Sovereign Lord the King, for and concerning the * *Felonious taking and stealing of*, &c. wherewith he stands charged before (naming the Justices that committed him, &c.) and to do and receive, &c. and not to depart the Court without Licence for the same, then this Recognizance to be void, &c.

And *Note*, To acknowledge a Recognizance or Bail in the Name of a Person not consenting thereto, is Felony. 21 Jac 1. c. 26. Cro. El. 531. 4 & 5 W. & M. c. 4.

Bailiff. See Extortion.

Baker. See Weights and Measures.

Bankrupt.

Tit. Behaviour and Recognizance.

A Recognizance where Bail is taken for a Felon.

* If in Prison, say, In Prisona.

A Condition for Felony, or Suspicion of Felony.

* If charged but with Suspicion of Felony, then say, The Suspicion of his Felonious, &c. whereof he stands charged.

Bankrupt.

FRaudulently conveying his Lands or Goods, or any Estate to the Value of 20*l.* to delay his Creditors, and not discovering or delivering of a Particular thereof (if he can) to the Commissioners; or shew some accidental Cause by which he is disabled from paying his Debts; shall be indicted at the Sessions of that County where he became Bankrupt, and upon Conviction shall be set in the Pillory two Hours, and have one of his Ears nailed to it, and cut off. 21 *Fac. cap.* 19.

5 Geo. cap. 24. Upon a Certificate under the Hands and Seals of the Commissioners, that a Commission is issued forth, and the Person is proved a Bankrupt, any Justice of Peace may grant his Warrant to apprehend him, and to send him to Gaol of the County where taken, there to remain till he is removed, by Order of the major Part of the Commissioners, and the Gaoler is to receive him, and to give Notice to the Commissioners forthwith, &c.

48th Annæ, cap. 17. continued by 7 Annæ, cap. 25. 5 Geo. cap. 24. Bankrupt not surrendring himself 30 Days after Notice in Writing left at his usual Place of Abode, and Notice in the Gazette of the Meeting of the Commissioners, and submit to be examined on Oath, and upon such Examination not discovering how, to whom, and upon what Consideration he hath disposed any of his Goods or Estate, and all Books, Papers and Writings relating thereunto, and deliver up to the Commissioners all such Estate, &c. as at the Time of such Examination shall be in his Power, and being convicted of wilful Omission upon an Indictment or Information, shall suffer as a Felon without Benefit of Clergy.

If the neat Proceed of the Bankrupt's Estate amounts to 8*s.* in the Pound, then the Assignees of the Commissioners shall allow him 5*l.* per Cent. not exceeding 200*l.*

Bargain and Sale. See Inrolment.
Bark of Trees. See Leather.

Barrettry.

Cro. Eliz.
148.

THIS is an Offence at Common Law, for which a Man may be indicted at the Sessions; and if such an Indictment conclude *contra formam Statuti*, 'tis not void, tho' there is no Statute which makes it an Offence. For the Act 34 Ed. 3. cap. 1. gives the Justices of Peace Power to punish a Barrator, but

but doth not create the Offence; which is of a mixed Nature; of which the Justices of Peace cannot hold Plea by Vertue of the Commission of the Peace, but by another Power which extends to Trespas.

1. A Barretor is a common Stirrer up, or Maintainer of In Courts; Suits or Quarrels in Courts; or in the County. 8 Rep. 37. In the Country:
As where many feigned and unjust Actions or Suits are maliciously stirred up in any Court of Record, or inferior Court; if any Man of himself, or in his own Causes, is a common Oppressor of his Neighbours by such Suits.

Disturbers of the Peace, any common Quarrellers, Fighters; or those that make Affrays.

2. Those who by Force or Fraud detain the Possessions of another which are in Controversie, be it either in Houses, Lands, or Goods.

3. Those who invent or spread abroad false Reports; by reason whereof many Differences arise among Neighbours:

4. Any common Disturber of the Peace.

These Men any Justice may bind to the Peace of Good Behaviour or they may be indicted at Sessions, and fined.

The Words, *Communis Barrestator*, where formerly held necessary to be inserted in every Indictment for Barretry; and therefore to alledge, That the Defendant is a Promoter of Suits, or that he is *communis vicinorum Oppressor*; is not sufficient without those Words. 1 Sid. 282.

But it hath lately been ruled otherwise; for an Indictment against the Defendant for that he is *Quotidianus perturbator Pacis*, Oppressor was not quashed, tho' the same Exception was taken to it, viz. *Of Perturbator Pacis*, was held too general, 1 Mod. 288.
the Omission of the Word *Barrestator*. Hill. 8 Will. B. R. Rex *vers. Gregory*.

It was formerly held, That it was not necessary to set forth in what Place the Offender was a Barretor; because a Man who is guilty of this Offence, is a common Barretor every where: But of late 'tis ruled otherwise; for if 'tis traversed, and no Place alledged in the Indictment, there cannot be any *Venire facias* awarded to try the Fact. Cro. Eliz. 195. Palm. 450. Latch 194. Godb. 381.

And now I have mentioned a *Venire facias*, I must also take Notice, that 'tis not necessary it should be returnable at the next Sessions after the Party is indicted; for if he appear he may be tried at the same Sessions.

It seems essential to conclude the Indictment with the Words, *Contra pacem*, for that he is *Communis Barrestator & Discordiarum inter Vicinos Seminatio*, & *Pacis Regis Perturbator in magnum contemptum Domini Regis*, & *in malum exemplum aliorum Delinquentium*: All this is not sufficient, if the Words *Contra Pacem* are omitted. 2 Cro. 527. 2 Roll. Abr. 82.

But for other small Omissions or Surplusage, the Court of B. R. seldom quash an Indictment of Barretry; as where one was convicted and fined 100 l. & *ulterius ordinat' fuit*, That he

be of the Good Behaviour, and doth not say how long; this was held to be no Part of the Judgment. 1 Sid. 214.

G. db. 157. Yet where the Fact was said to be *Anno Regni Dom' nostri*, leaving out the Word *Regis*, the Indictment was quashed.

5 Mod. 18. When the Defendant is indicted for Barretry, he must have a Note of the Particulars, that he may know for what he is charged, otherwise the Court will not allow the Prosecutor to proceed to Trial.

3 Mod. 97. Upon an Indictment of Barretry, the Evidence was, That one G. G. was arrested at the Suit of another in an Action of 4000*l.* when in Truth he owed him nothing, and coming before the Lord Chief Justice to put in Bail, the Defendant appear'd there and solicited against him; *sed per Curiam*, this is not Barretry, but Maintenance; but where a Man is arrested by another, not with an Intent to recover any Right, but to oppress him, this is Barretry; So is Lending Money to promote and stir up Suits, and in this Case it appearing that the Defendant did entertain the Prosecutor in his House, and brought several Actions in his Name, where nothing was done, he was found guilty.

The Indictment.

Suffex ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Yeoman, 26 die Septemb' An' Regni, &c. apud L. in Com' pzed' fuit & adhuc est communis Barrecfator, & assiduus Perturbator, Pacis dicti Domini Regis necnon die, anno & loco supradict' fuit & adhuc est communis ac turbulentus Calumniator, Conbiciator, Pugnator & litium inter Vicinos suos Seminatore, adeo ut diversas lites & jurgia adtunc & ibidem & alibi in Com' pzed' inter diversos Domini Regis subditos movit & procurabit in magnum contemptum Domini Regis, & in malum exemplum aliorum delinquentium, ac contra Pacem dict' Domini Reg' Coron', &c.

This Indictment is general, and 'tis almost impossible to make any Defence to it, without a Rule of Court to help the Defendant, *viz.* That the Prosecutor shall give him Notice some Time before the Trial, what Suits he intends to give in Evidence, for otherwise he cannot be prepared to defend himself against that general Allegation, *viz.* *Diversas lites movet.*

Latch. 7. One *Toplin*, an Attorney, was indicted for Barretry, but had the good Luck to be acquitted, yet he was not discharged; for the Book tells us, That he appearing to the Court to be a notable Knave, was bound to his Good Behaviour.

I have been a little the larger on this Title, because I find 'tis but just mentioned by my Lord *Hale* in his Pleas of the Crown, 142.

Bastardy.

THIS is an Offence against the Spiritual and Common Law, and punishable in both Courts.

He may be bound to the Good Behaviour by one Justice, but this is by Vertue of the Power which he hath at Common Law, as *Conservator Pacis*, to punish Incontinency; it ought to be proved by the Oath of a Woman with Child, and then the Justice may send his Warrant for the reputed Father.

t. What is to be done with the putative Father before the Child is born.

A Warrant against the putative Father.

To the Constable, &c.

Suffex ss. **W**Hereas upon the Examination of A. P. single Woman, taken upon Oath before me this Day, it appeareth that she is now with Child; which Child, when it shall be born, will be a Bastard, and may then be chargeable to the Parish of, &c. And whereas she the said A. P. hath confessed, that J. L. of, &c. did beget the said Child on her Body and hath before me charged him with the same: These are therefore, in his Majesty's Name to command you, or some of you, to apprehend the said J. L. and to bring him before me, or some other of his Majesty's Justices of the Peace for this County, to answer what is laid to his Charge as aforesaid: And hereof fail not. Given, &c. One Justice.

When the Person appeareth before the Justice, then he must enter into a Recognizance with Surerries for his Appearance at the next Sessions, and so he may be continued upon it till the Child is born. The Condition whereof is, &c.

The Condition of a Recognizance for the Appearance of the putative Father at the Sessions before the Child is born.

THE Condition of this Recognizance is such, That whereas the above-bounden J. L. is charged by A. P. of, &c. single Woman, That he had the carnal Knowledge of her Body at several Times, and that the said A. P. is now with Child by him the said J. L. which, when born, will be a Bastard: If therefore the said J. L. shall personally appear before his Majesty's Justices of the Peace at their next General Quarter-Sessions of the Peace to be holden for the East Part of the said County of Suffex at L. then and there to abide and receive what shall be enjoined by the said Court concerning

Bastardy.

the Premises, and in the mean Time to be of the Good Behaviour; That then, &c.

If he refuse to enter into the Recognizance, then he may be committed.

The Mittimus.

To the Keeper of, &c.

Suffex ff. **I** Do herewith send you the Body of J. L. of, &c. Yeoman, who was brought before me this present Day, and charged by A. P. of, &c. to have gotten her with Child; which Child, when born, will be a Bastard: He the said J. L. having refused before me to find * Security for his Appearance at the next General Quarter-Sessions of the Peace to be held for this County, to answer unto the said Charge. These are therefore to require you to receive the said J. L. into your Custody, and him safely to keep in the common Gaol, until he shall be from thence discharged by due Course of Law: And hereof fail not. Given under my Hand, Seal, &c.

* If for good Behaviour, then say, To find Sureties for his good Behaviour, and to appear at the next, &c.

Order.

If he enter into such Recognizance as aforefaid, nothing more is to be done till the Child is born, and then two Justices, *Quorum unus*, who are next the Place where 'tis born, may examine the Matter, and order three Things, viz. The Punishment of the Father and Mother. 2. The Relief of the Parish in Part, or in all. 3. They may charge the Parents with Payment of Money weekly for Relief of the Child.

If the two Justices cannot agree in making their Order, then it may be referred to the Sessions to be re-examined: but it must be again heard before the two Justices, with the Direction of the Court, because the Sessions cannot make an original Order in Bastardy.

Before they make their Order, 'tis usual for them to send their Warrant to bring the reputed Father and Mother before them, with such Witnesses as they shall think fit.

The Form of the Warrant.

To the Constable, &c.

Two Justices. *Quorum unus.*

Suffex, ff. **W** Hereas A. P. of, &c. hath lately been delivered of a Bastard-child, yet living, and likely to be chargeable to the Parish of, &c. And whereas the said A. P. hath charged J. L. of, &c. to have begotten the said Child on her Body: These are therefore in his Majesty's Name, to command you to bring the said J. L. before us on Wednesday the 25th Day of this instant September, at ten of the Clock in the Morning of the same Day, at the House of, &c. to be examined by us concerning the Premises; and that you

you may give Notice to the said A. P. of the Time and Place aforesaid, that she may be there also present; and that you likewise give Notice to M. A. of, &c. S. W. of, &c. that they are required to appear at the Time and Place aforesaid, to testify what they know concerning the Premises, to the End that such Order may be made therein as to Justice doth appertain; and that you certify unto us what you have done in the Execution of this Precept, at the Time and Place aforesaid. Given under our Hands and Seals, &c.

A Bastard of a Person able to keep it, and not likely to be chargeable to the Parish, is not within the Statute of 18 Eliz. Cro. Car. 436.

The Order.

Suffex, ff. **T**HE Order of H. P. and R. B. Esqs; two of his Order, Majesty's Justices of the Peace for the said County; one whereof is of the Quorum, and both now residing within the Limits where the Parish Church of H. in the County aforesaid, standeth, the 25th Day of September, in the Year of our Lord 1701. according to the Form of the Statute in that Case made and provided, concerning a Male Bastard-Child lately born in the said Parish of H. of the Body of A. P. of, &c. single Woman; which Bastard-Child, ever since its Birth, hath been, and is still chargeable to the said Parish, and is likely so to continue.

First, Upon Examination of the Cause and Circumstances of the Premises taken upon Oath before us, and due Consideration thereof been likewise had by us, we * do adjudge J. L. of, &c. Yeoman, to be the * Doth imputative Father of the said Bastard-Child; and we do also order, That itead of do, as well for the Relief of the said Parish of, &c. in Part, as also for made an the Provision and Maintenance of the said Bastard-Child, that he the Order void. said J. L. shall weekly, and every Week, from the Time of the Birth of the said Child, and so long as the same shall be chargeable to the said Parish of, &c. pay or cause to be paid unto the Churchwardens or Overseers of the Poor of the Parish of, &c. for the Time being, the Sum of 2 s. for and towards the Maintenance of the said Child; and shall likewise pay, or cause to be paid to the Churchwardens or Overseers of the Poor of the Parish aforesaid for the Time being, the * Sum * It was a of 4 l. within three Months after the said Bastard-Child shall arrive Question, at his Age of twelve Years, for and towards the putting forth the said Whether Child to be an Apprentice. And farther, We do hereby order, That the Justices have Power to order a the said A. P. shall every Week, for so long Time thereof as the said Sum in Child shall be chargeable as aforesaid, and she shall not keep the same, 1 Vent. 336. Poor of the Parish of, &c. for the Time being, Six-pence, for and to- but it is now ad- wards the farther Maintenance of the said Child. judg'd they may. M. 12 Anna

And lastly, We Order, That the said J. L. do, upon Notice of this our Order, forthwith give sufficient Security to the Churchwardens and Overseers of the Poor of the Parish of, &c. well and truly to perform
G. 3 so

so much thereof, as doth concern the said J. L. and which on his Part is hereby order'd to be done and perform'd. In Witness whereof, &c.

If Notice should not be given to the putative Father till the Sessions is past after the Order made, so that the Party is depriv'd of the Benefit of his Appeal; yet B. R. would not quash the Order, but referr'd it to the Justices in Sessions to discharge or affirm it. *Style 326.*

This Order being a Judgment upon the Parties, is not to be respited without paying what is order'd, if it be a Sum in Gross, as 'tis usual, besides weekly Payments.

Sid. 363.

And none but the Justices have Authority to declare who is the reputed Father; but if they are unreasonable in the Sum allowed for the Relief of the Parish, B. R. may reform it; as if they order 2 d. per Week for the Maintenance of a Child.

1 Salk. 122.

Appeal from an Order of two Justices by which R. W. was adjudg'd to be the putative Father of a Bastard-Child, and order'd to pay so much weekly to the Overseers of the Poor, the Sessions confirm'd the Order, and committed the said W. R. for Non-payment of the Money; and this Matter being return'd on a *Habeas Corpus*, it was objected, That an Order to pay so much to the Overseers is void; *sed per Curiam*, before there were any Overseers, the Justices might order the Money to be paid to two or three of the principal Inhabitants; and if so, then Payment to the Overseers is good; but then it was objected that the Sessions ought not to commit, but to proceed upon the Recognizance, which is true, if they proceed on the Statute 18 Eliz. but if on the Statute 3 Car. 1. they may commit.

1 Salk. 124.

Order made by two Justices, That the putative Father should pay 9 l. for Maintenance of a Bastard, and this upon Sight of the Order adjudg'd good; for it may be for Indemnifying the Parish for what Charges they were at before the Father was taken, and by the Statute the Justices are empower'd to take Order for the Relief of the Parish by Payment of Money weekly, or other *Sustentation of the Child*.

And regularly these Things are requir'd to make a good Order:

1. It must be made by two Justices, *Quorum unus.*
2. They must be next the Place where the Parish is, which is to be reliev'd.
3. It must be made at a private Meeting, and not at Sessions.
4. It must be concerning a Bastard-Child, and so express'd, and likely to be chargeable. &c. It must appear how long the Father shall maintain it. *Style 154. 1 Vent. 37.*
5. The Place of Birth must be alledg'd, for otherwise the Child may be born where the two Justices have no Jurisdiction; and it must likewise appear, that it was born in the Parish to which Relief is order'd. *Style 14, 368.*

Style 154.

6. It must be made pursuant to the Act, viz. to relieve the Parish in Part, or in all, and for the Relief of the Child by a weekly Maintenance. In some Orders, the Word *Education* is inserted, but that hath been excepted against.

7. It must directly affirm who is the reputed Father. *Sid.* 363.

But an Order is ill, if it doth not appear that one of the Justices of the *Quorum*; if the Money is ordered to be paid till the Child is 14 Years old, when it ought to be so long as it shall be chargeable to the Parish; if the reputed Father is ordered to give such Security as the Churchwardens shall think fit.

So if the Order is, that one shall contribute Half the Charges, because he suffered a Soldier to get his Servant with Child.

As to the third Rule abovementioned, the Statute of 3 *Car. cap.* 4. (by which divers Acts are continued, repealed and some made perpetual) gave the Sessions Power to examine all Things concerning Bastardy, which the two Justices had before; but what was enacted by that Law, was to continue only (in this Case) to the next Sessions of Parliament, which being long since expired, the two Justices have now the original Jurisdiction again, and their Order shall bind till avoided by Appeal. *1 Vent.* 175. *1 Mod.* 287.

Now upon the Appeal, the Sessions must either affirm or quash the Order made by the two Justices: They cannot make a new one; neither, after 'tis revers'd, can any other Sessions make another Order, because upon such Reversal the Statute of 18 *Eliz.* is satisfied, and no other Justices can intermeddle with it, and therefore where an Order is discharged upon an Appeal; the Party who was charged is absolutely acquitted. *Jones* 330. *1 Vent.* 59.

But the Sessions may commit, as the Justices might have done, by the Statute 3 *Car.* 1. unless the Party give Security to perform the Order; 'tis otherwise if they proceed on the Recognizance, for then they cannot commit.

An Order was made, to pay such Charges as the Parish had been at; and did not say, that the Child was likely to be chargeable, &c. yet it was held good. *1 Vent.* 37.

An Order was made for the Parishioners of B. to receive a Bastard-Child, and they refusing were indicted for a Contempt, setting forth, *quod cum* an Order was made, &c. for which Reason it was quashed, because it was not positively said, that an Order was made for the Parishioners to receive it. *Trin.* 5 *W.* 3.

A Woman big with Child was removed by an Order from B. to R. and there she was delivered, R. appealed, and on the Determination of the Appeal she was sent back to B. and the Child ought to be sent with her, for by the Appeal the Settlement was suspended; but now the Right appears to be that

the Mother should be settled in B. and if so, her Settlement is avoided in *R. ab initio*.

5 Mod. 419. Upon a Special Order of Sessions the Question was, If the
1 Salk. 122. Husband is beyond Sea during the whole Time the Wife is with Child, whether this is a Bastard within the Statute 12 Eliz. cap. 13. and adjudged, that it was; but because it did not appear by the Order that the Husband was absent all that Time, and it being in the Disjunctive that the Husband was not here *at the Begetting or Birth of the Child*, the Order was quashed; for if he was here at either of these Times, 'tis sufficient.

1 Salk. 122. Upon a Special Order of Sessions the Fact stated for the Opinion of the Court was, *W. R.* was divorc'd *a mensa & thoro*, and then she lived in Adultery, and had several Children by another Man, born in the Parish of *St. Giles*, and registred as his Children, and by his Name: Adjudg'd, That they are Bastards because the Court will intend a due Obedience to the Sentence of Divorce, unless the contrary appear; but if the Husband and Wife consent to live separate, the Children born after such Separation shall be legitimate, because his Access to his Wife shall be presumed, but if 'tis found by a Jury that there was no Access, then they are Bastards.

An unmarried Woman with Child was removed from *Westbury* to *Corsham* in *Wiltshire*, and there she was delivered; *Corsham* appealed to the next Sessions, and there the Order was revers'd; (so far this Case is like the last) but then two Justices sent the Child to *Corsham* where it was born, and upon their Appeal this last Order was confirm'd; but it being remov'd into *B. R.* it was adjudg'd, That the Birth did not settle the Child at *Corsham*, because it was born under an illegal Order procured by *Westbury*, which being revers'd, it must now be taken that they unlawfully procured the Woman to go to *Corsham*.
3 *Anna B. R.*

Mich. 'Tis true, no Time is limited by the Statute, and therefore
2 Will. Exceptions have been taken to Orders to pay so much a Week for a certain Number of Years; but this Exception hath been disallowed, especially when 'tis also express'd in the Order for so long Time as the Child is a Charge, &c.

1 Mod. 20. Order quashed for that the putative Father was ordered to
2 Salk. 468. pay 3 s. weekly, *till the Child should attain the Age of 14 Years*; for the Justices have no Authority but only to indemnify the Parish, by obliging him to maintain it so long as it shall be chargeable.

2 Salk. 475. Upon a Motion to quash an Order, the putative Father must be in Court; the Objection was, That the Order did not set forth that the Child was *likely to be chargeable*; but adjudged, that it is self evident that Bastards are likely to be chargeable.

An Order of Bastardy was discharg'd on an Appeal to the next *Quarter-Sessions after Notice*, and now this Order of Sessions was discharg'd, because by the Statute the Appeal must be to the next *General Quarter-Sessions after Notice*, and there may be a *General Sessions* before a *General Quarter-Sessions*, as in *London and Middlesex*, where there are Four *General Sessions* in a Year.

Order to remove *E. S. late of the Parish of L. single Woman*, and *W. her Son*, from the Parish of *M.* to the Parish of *L.* for that by Fraud of the Parish of *L.* she was deliver'd of the said *Wm. her Bastard-Son* in the Parish of *M.* it was objected, that where a Bastard is born, there it is settled, unless some other Settlement appears; but in this Case it did not appear that the Mother was settled in *L.* 'Tis true, 'tis said that *E. S. late of L. single Woman, &c.* which is only a Description of her Person, and an Allegation of the Place, but not that she was legally settled there.

By an Order of two Justices *Glegg* was adjudged the putative Father of three Bastard-Children, and he was ordered to pay 10*l.* to the Overseers of the Poor, &c. for the Charges that the Parish had sustained, by reason of the said Children, and 2*s.* 6*d.* per Week for so long Time as they or either of them should be chargeable to the Parish, which Order was confirm'd on an Appeal; and both the Orders being removed into *B. R.* by *Certiorari*, it was objected against the Original Order.

(1.) That it did not appear that *Glegg* was duly summoned to appear before the Justices; 'tis true the Order set forth that he had Notice to appear, but not for what Cause.

(2.) By the Order the Father was charged to pay 10*l.* whereas the Justices have not Power to charge him with a Sum in Gross.

(3.) He was charged by one Order to be the Father of three Bastard-Children, when there should be as many Orders as there were Bastards; the Court was of Opinion, that if the Defendant was not duly summoned to appear, and for what Cause, the Order ought to be quashed; but as to the second Objection a putative Father may be charged with a Sum in Gross, tho' this is seemingly against the Statute 18 *Eliz. cap. 3.* by which the two Justices have Power to charge the Mother or reputed Father with the Payment of Money weekly; but by the same Statute, they have likewise Power to take Order for the Relief of the Parish, which must be intended Relief against that Charge which it hath sustained, as well as against the Charge which it may sustain.

As to the third Objection the Court gave no Judgment, but that the Parish should have Time to shew Cause whether the Defendant was duly summoned. *Mich. 1721. B. R. the King versus Glegg.*

If the Child dies after the Order is made, and before the next Sessions, and no Security be given to perform the Order; then

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then when the Party appears at Sessions, they may order him to pay the Charges, upon Proof of serving the Order.

But if Security hath been given, then the Sessions have no further Power; but the Bond must be put in Suit, if the Condition is not perform'd.

The Bond must be made to the Churchwardens, &c. and their Successors.

The Condition of the Bond.

** If the Bond is given before the Birth of the Child, then say, viz. Whereas, &c. was lately gotten with Child, being then and still unmarried, to which Child, &c.*

THE Condition of this Obligation is such, That whereas A. P. of, &c. hath lately been * deliver'd of a Female Bastard-Child within the Parish of, &c. of which Child the above bounden J. L. stands charged according to Law to be the reputed Father: If therefore the said J. L. his Heirs, Executors or Administrators, or any of them, do and shall from Time to Time, and at all Times hereafter, acquit, discharge, and save harmless, as well the above-named T. H. and F. G. Churchwardens of the Parish of, &c. aforesaid, and their Successors for the Time being, as also the Inhabitants and Parishioners of the said Parish, of and from all Costs, Charges, and Troubles whatsoever, for or by Reason of the Birth, Maintenance, Nourishing, and Bringing up, the said Child, and of and from all other Suits, Charges, Troubles and Demands whatsoever, touching or concerning the same; then this Obligation to be void, otherwise to remain in full Force and Vertue.

If he will not give such Security as aforesaid, but will appeal from the said Order to the next Sessions, then he must enter into a Recognizance for his Appearance there. The Condition whereof is:

The Condition of a Recognizance to appear at Sessions after the Order made:

THE Condition of this Recognizance is such, That if the above-bounded J. L. shall personally appear at the next general Quarter-Sessions of the Peace to be holden at L. for the East Part of the County of Suffex, and abide such Order as shall be then made by the Court concerning a Bastard-Child, now born of the Body of A. P. of, &c. whereof he the said J. L. is now charged and accused to be the reputed Father, if any such Order shall be then made; and in Default of such Order to be then made or taken by the said Court, if the said J. L. do and shall perform the Order therein already made by H. P. and R. B. two of his Majesty's Justices of the Peace for the said County, that then, &c.

But if upon the Service of the Order, he refuses to enter into such Recognizance for his Appearance, or to give Security as aforesaid, then the two Justices who made the Order may commit him.

The Form of the Commitment for not obeying the Justices Order.

To the Constable of, &c. and to the Keeper of, &c.

Suffex, ff. **W** Hereas by an Order made and subscrib'd by us on ^{Two Ju-} the 7th Day of October last, concerning a Female ^{stices, Quo-} Bastard-Child, lately born of the Body of A. P. a single Woman, in ^{rum unus.} the Parish of H. in the County aforesaid, and chargeable to the said Parish; we have adjudg'd J. L. of, &c. to be the reputed Father of the said Bastard-Child, according to the Form of the Statute in that Case made and provided; and amongst other Things in the said Order contained, we have order'd, That the said J. L. shall Weekly pay, or cause to be paid, to the Churchwardens or Overseers of the Poor of the Parish of, &c. the Sum of two Shillings for the Maintenance of the said Child; and shall likewise pay unto them the Sum of four Pounds within three Months after the said Child shall attain her Age of twelve Years, to put her to be an Apprentice; and likewise that the said J. L. do and shall give sufficient Security to them to perform the said Order. And whereas it hath been duly proved before us, that the said J. L. had personal Notice thereof, but hath not hitherto perform'd the same, or given Security so to do, or entred into a Recognizance to appear at the next Sessions: These are therefore, in his Majesty's Name, to command you to apprehend the said J. L. and to deliver him to the Keeper of the Gaol aforesaid, to be by him kept therein without Bail or Mainprise, except he shall give sufficient Security to perform the said Order, or enter into a Recognizance personally to appear at the next general Quarter-Sessions of the Peace to be holden for the East Part of the said County of Suffex, to abide such Order as the Court shall there take concerning the Premises, if any such Order shall be then made; and if not, then to abide and perform the Order already made, as aforesaid: Commanding also you the aforesaid Keeper of the said Gaol, to receive the said J. L. into your Custody, and him safely to keep, according to the Purport of this Precept. Given under our Hands and Seals this tenth Day of October, &c.

The two Justices may inflict a corporal Punishment upon Corporal the reputed Father, by Vertue of the Statute 18 Eliz. But Punish- this is not usually done but where he is very poor, and not of ment of Ability to discharge the Parish. reputed Father and Mother.

A War-

A Warrant for the Punishment of the reputed Father by Whipping.

To the Constable, &c.

Two Ju-
stices, Quo-
rum unus.

Suffex, ff. **W**Hereas A. P. of, &c. in the said County, single Woman, was lately deliver'd within the said Parish of a Female Bastard-Child, begotten and born out of lawful Matrimony, which Child is yet living, and chargeable to the said Parish, and is likely so to continue. And whereas, upon our Examination of the Cause and Circumstances according to the Statute in that Case made and provided, we have adjudged J. L. of, &c. to be the reputed Father of the said Bastard-Child. Now for the Punishment of the said J. L. we do hereby order and appoint you to strip, or cause him to be stripped naked from the Middle upwards, and to tie or bind him to some Cart or Duncote; and being so stripp'd and tied, to cause him to be drawn upon some Day between the Hours of nine and twelve in the Forenoon, from the House of, &c. to the, &c. and on the Way to be whipp'd in such Manner as is usual in such Cases; and you are with all convenient Speed to make known unto us what you have done concerning the Premises; and hereof fail not at your Perils. Given under our Hands and Seals, &c.

7 Jac. c. 4. By the Statute of 7 Jac. the Justices of Peace may commit lewd Women to the House of Correction, who have Bastards that may be chargeable to the Parish, there to be punish'd and set to Work for a Year; and if they offend a second Time, not to be enlarg'd without giving Security to offend no more.

This is only in such Cases where they have been punish'd for the first Offence; for if a Woman hath a Bastard, and is not punish'd for it, and afterwards hath another; tho' this is the second Offence, yet she is not to be continued in Prison till she give Security not to offend any more. 2 Bulst. 348.

But if the Woman will discharge the Parish, she cannot be punish'd by this Act; yet by Vertue of 18 Eliz. she may be punish'd by Whipping, as the reputed Father may be; and for this, see the last Warrant, *mutatis mutandis*.

Mittimus of the Mother of a Bastard to the House of Correction.

To the Constable of, &c. and to the Keeper of the House of Correction for the said County, at L.

Suffex, ff. **W** Hereas A. P. of, &c. hath lately been deliver'd in Two next the said Parish of a Female Bastard-Child, yet living, and chargeable to the said Parish, and likely so to continue: *Justices, Quorum unus.* These are therefore to command you the said Constable to apprehend the said A. P. and her safely to convey to the House of Correction aforesaid, and to deliver her to the Keeper thereof, together with this Precept: Commanding also you the aforesaid Keeper to receive the said A. P. into your Custody, and there to punish her, and to set her on Work for and during the Space of one whole Year next ensuing, according to the Form of the Statute in that Case made and provided: And hereof fail not at your respective Perils. Given under our Hands and Seals, &c. 7 Jac. c. 4.

By this Precedent, you may see that she is not to be sent to the House of Correction till the Child is born, and the Woman well again; and that the Child must be living, and chargeable to the Parish.

A Warrant against the Mother for the second Offence.

To the Constable, &c. and to the Keeper of the House of Correction at L. for the County aforesaid.

Suffex, ff. **W** Hereas A. P. of, &c. a lewd Woman, hath been formerly deliver'd of a Bastard-Child in the Parish of, &c. born of her Body out of lawful Matrimony, and chargeable to the said Parish: And whereas she hath again offended the second Time in the like Nature: These are therefore to command you the said Constable to take the said A. P. and her safely to convey to the aforesaid House of Correction, and there to deliver her to the Keeper thereof, together with this Precept: Commanding also you the said Keeper to receive the said A. P. into your Custody, and there to punish her, and set her to Work until she shall give good Security for her Good Behaviour not to offend in the like Manner again: And hereof fail not at your respective Perils. Given under our Hands and Seals, &c. *Two Justices, Quorum unus.* 7 Jac. c. 4.

By the Statute of 14 Car. 2. the Churchwardens and Overseers of the Poor of any Parish where a Bastard-Child shall be born, may seize so much of the Goods, and receive so much of the Rents of the Lands of the reputed Father and lewd Mother, as shall be order'd by two Justices; which Order must be confirm'd at Sessions; and this is for and towards the Discharge of the Parish. *14 Car. 2. c. 12.*

But they cannot sell the Goods by Verrue of the Order of the two Justices: The Sessions must make an Order for that Purpose. An

An Order for the Relief of the Parish, out of the Estate of the reputed Father.

To the Churchwardens and Overseers of the Poor of, &c. and to every of them.

Two Ju-
stices, Quo-
rum unus.
14 Car. 2.
c. 12.

Sussex, ff. **W**Hereas it appeareth unto us, upon the Complaint of the Churchwardens and Overseers of the Poor of the Parish of, &c. that J. L. the reputed Father of a Bastard-Child lately born in the said Parish; is departed from his usual Place of Abode, and hath left the said Child upon the aforesaid Parish, though he hath a sufficient Estate to charge and indemnify the same: These are therefore to require you to seize and take so much of the Goods and Chattels of the said J. L. and to receive so much of his Rents yearly issuing out of his Lands, as will amount unto the Sum of, &c. which we do hereby appoint you to receive for and towards the Discharge of the said Parish, according to the Form of the Statute in that Case made and provided. Given under our Hands and Seals, &c.

5 G. c. 8.

This Statute, 12 Car. 2. extended only to Bastard-Children; but by the Statute 5 G. cap. 8. 'tis enacted, That the Churchwardens or Overseers of the Poor of such Parish, where any Man shall leave his Wife, or Child, or Children, upon Application to two Justices, and by their Warrant or Order, may seize and take so much of his Goods and Chattels, and receive so much of the annual Rents and Profits of his Lands and Tenements, as they shall order, for or towards the Discharge of the Parish, where such Wife, Child, or Children shall be left; for the Bringing up and Providing for them; which Order being confirm'd by the next Quarter-Sessions, that Court may make an Order to the Churchwardens or Overseers of the Poor of such Parish, to dispose of such Goods and Chattels by Sale, or otherwise as the Court shall think fit, for the Purposes aforesaid, and likewise to receive the Rents and Profits of the Lands, &c. or so much thereof as the Sessions shall order; the Churchwardens, &c. to be accountable to the Sessions for all the Money they shall receive by Virtue of this Act.

The Order of the two Justices.

To the Churchwardens or Overseers of the Poor of the Parish of H. in the County aforesaid.

Middx. ff. **W**Hereas upon Application duly made unto us, being his Majesty's Justices of the Peace for the County aforesaid, it appeareth, that W. R. late of the Parish of H. in the said County, Taylor, is gone away from thence, and hath left Mary his Wife, and Richard, and Robert, his two Children, upon the Charge of

of the said Parish, contrary to the Statute in that Case made and provided: We do therefore order and direct you, or any of you, to seize and take the Goods and Chattels of the said W. R. and to receive the yearly Rents and Profits of his Lands and Tenements, for and towards the Discharging of the said Parish, in and for the Maintaining and Providing for his said Wife and Children, so left by him upon the Charge of the Parish as aforesaid. Given under our Hands and Seals, &c.

This Order being confirm'd at the next Sessions, the Court may then make an Order for the Sale of the Goods.

The Constable having a Warrant to apprehend the Father, and willingly or negligently suffering him to escape, one Justice may bind him over to the Sessions, and there he may be order'd to contribute towards the Maintenance of the Child, or may be fin'd.

The Punishment of the Officers for negligent Escape.

So may any Person who shall perswade, procure, or convey away the reputed Father, or who suffers the Mother to escape, or conveys her away.

But this is not by Vertue of any of the Statutes made against Bastardy; 'tis only a discretionary Act in the Justices, which the Conservators had at Common Law.

My Lord Coke tells us, forty Weeks, or nine Months, according to thirty Days in each Month, is the *Legitimum Tempus*.

How long a Woman may go with Child. 2 Cro. 531. Palm. 9.

But *Anno 7 Jac.* in B. R. it was held, that the Husband dying the 23 of March, and his Widow being deliver'd the 5th of January following, which is ten Days after the forty Weeks, that the Child was Legitimate; in which Case the Physicians argued, that a perfect Birth may be at seven Months, which is long before the Time of the proper Birth; and this may be occasion'd by the Strength of the Mother: So likewise it may be deferr'd beyond its proper Time, by Cold, hard Usage, Want of Necessaries, Infirmary of Body, or Passion of the Mind.

Sir Tho. Ridley, who was a learned Man, in his Book of the Civil Law, which he dedicated to King James the First, tells us, That in one of the Institutions of *Justinian* it was held, That the Child of a Woman deliver'd eleven Months after the Death of her Husband, was held Legitimate: And the Gloss upon the Constitution mentions a Widow at *Paris*, who was deliver'd fourteen Months after her Husband's Death; and the Judges there held the Child to be Legitimate. But forty Weeks according to our Law, is the most usual Time.

Ridley's View of the Civil Law.

Upon a Special Order of Sessions the Question was, If the Husband was *beyond Sea*, and during that Time the Wife is got with Child, whether it will be a Bastard? But it not appearing by the Order that the Husband was *beyond Sea all the Time* the Wife went with Child, it was quash'd; for if it had so appear'd, it had certainly been a Bastard.

Where there is a Divorce *a mensa & thoro*, the Children born afterwards shall be Bastards, for the Court will intend a due Obedience to the Sentence till the Contrary is prov'd; but if

the

Bawdy.

the Husband and Wife separate by Consent, 'tis otherwise; for in such Case Access shall be intended till the Contrary is prov'd. 5 *Anna*.

An Indictment will lie against the Defendant for Conspiring to charge another with a Bastard-Child; for 'tis a Disgrace and an Injury to his Reputation.

Battery. See Assault.

Bawdy.

3 Inst. 205,
206.

BY the ancient Laws of this Kingdom, there was no Difference in the Punishment of Fornication and Adultery, for both were Offences inquirable in Leets and Tourns, and punish'd by Fine and Imprisonment.

The Book called *Domesday* is very particular in some of these Fines, and giveth an Account to whom they did belong, and the Sum in which the Offenders were fin'd.

In *Suffex*, an adulterous Person of either Sex was fin'd usually at 8 s. 4 d. and that both in that County and in *Kent*, the King was intitled to the Fine of the Man, and the Archbishop to that of the Woman.

Our Histories mention eighteen Bawdy-Houses which were publickly known and allow'd on the Bank-side in *Southwark*; these were reduc'd to twelve by H. 7. and were afterwards suppress'd by the Proclamation of his Son and Successor, H. 8. in the 37th Year of his Reign.

But it was always held to be an infamous Office to keep a Bawdy-House; and therefore formerly when any Man let a Lease of his House, there was an express Covenant inserted, That the Tenant should not entertain any lewd Women there.

And now at this Day, any Constable, upon Information that a Man and Woman are about to commit either of these Offences, or that they are gone to any lewd House, may, if he find them there together, carry them before a Justice of Peace without any Warrant, and the Justice may bind them to the Good Behaviour. *Dalt.* 214.

Poph 208. If a Man is indicted for frequenting a Bawdy-house, it must appear that he did know it to be such a House; and it must expressly be alledg'd in the Indictment, that it is a Bawdy-house, and not that 'tis only suspected to be such.

The Defendant was indicted at the Sessions, for that she being of ill Fame was a Night-Walker, and that on such a Day, &c. she frequented a Bawdy-House; it happen'd that this Bawdy-House was not within the Jurisdiction of the Justices, and therefore as to that Part of the Indictment it was ill, and they would have made the other Part of it likewise to be ill; for tho' a common Night-Walker may be punishable, yet a Night-Walker

Walker is not, but because the Indictment was that she was of ill Fame, it shall be intended she was a common Night-Walker. *Latch. 173. Willer's Case.*

Indictment against the Defendant, for that she was *Communis* 1 Salk. 382. *Lena, ac male dispositas Personās in Domibus Lupanaribus convenire & Scortationes & Fornicationes committere pro lucro proprio illicite procuravit*; upon Not guilty pleaded, the Defendant was convicted; but it was revers'd upon a Writ of Error: For tho' an Indictment will lie for keeping a Bawdy-house, it will not lie for being *Communis Lena*, nor for a Solicitation of Chastity.

Indictment against Husband and Wife for keeping *Communis* 1 Salk. 384. *nem Domum Lenocinii, Anglice, a Common Bawdy-house*: It was objected, that this could not be the *Keeping* of the Wife, no more than it could be the *Keeping* of a Servant; but it was held, That *Keeping* here signified Governing or looking after, and not renting; and the Wife may have a Share in the Governing of a disorderly House, as well as the Husband. *M. 10 Anna.*

If a Woman commit *Adultery*, and for that, or any other Cause her Husband and she separate by Consent, and she hath a separate Allowance, he who trusts her after publick Notice of the Separation, trusts her upon her own Credit, for the Husband is not answerable.

Indictment for keeping a Bawdy-house.

JURAT, &c. quod T. P. &c. de, &c. die & anno, &c. & diversis temporibus antea & postea, apud L. tenent & custodiunt, occupant, & frequentant in domibus suis ibidem communia hospitia lupan' lujur' & fornication' & permittunt homines, & alias personas suspectas, & non boni gestus nec fame, cum meretricibus carnaliter incubare, ad magnum nocumentum totius populi Domini Regis, ibidem prope commorantium; & in malum exemplum omnium aliorum in tali casu delinquent' ac contra pacem, &c.

Behaviour.

THose who are of ill Fame, or common Disturbers of the Peace; those who are accused, or guilty of any of the Offences herein after specified, may be required by one Justice to enter into a Recognizance with Sureties or without them, according to the Discretion of the Justice, to be of the Good Behaviour; and upon Refusal, may be committed.

The Offences, for which Persons may be bound to Good Behaviour are;

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Ale-

Behaviour.

- Ale-houses. { Those who tipple frequently in them, or in Taverns.
- Bastardy. { Those who are reputed to be the Fathers of Bastard-Children, and likewise the Mother of such Child, if chargeable to the Parish; but it must be for her second Offence.
- Barretry. { Common Barretors.
- Bawdry. { Those who frequent Bawdy-Houses, and the People who keep such Houses; likewise Whoremongers and Common Whores; for 'tis a Temporal Offence, and against the Peace of the Kingdom.
- Cheaters and Cozeners. { By Cards, Dice, false Letters, or any other Game or Games whatsoever.
- Conies. { Hunting, killing or stealing them, either in Park or Warren.
- Drunkard. { Convicted by one Justice of Peace, or Head-Officer, or by Proof of one Witness upon Oath.
- Felons. { Acquitted of Felony, or convicted and pardoned, if the Person is of ill Fame; but this is discretionary.
- Fish. { Those who steal Fish, or destroy the Pond; the Person must be convicted.
- Gaming. { Such who frequent Gaming-houses, and those who game and have no Estates to support themselves.
- Hawks. { Convicted of taking Hawks or their Eggs out of the Grounds of another Person, may be bound for seven Years.
- Hue and Cry—Raising it without a Cause.
- Hunters. —In Parks and Warrens.
- Idle Persons, { Living well, and having no Estates, Trades or Employment to support themselves.
- Justice of Peace. { Those who misbehave themselves before him, or before any other Officer, in the Execution of Justice; those who speak contemptible Words of him, or abuse his Warrants; those who delude his Authority by Complaint, without Prosecution.
- Letters Scandalous. { An Information was brought for writing such a Letter, and the Publishing it was proved, and the Offender fined 40 Marks; 'tis a Breach of the Peace.
- Libels. { Those who contrive, procure or publish them, whether true or false, either against Persons living or dead, by Writings, Words, Pictures, or any other Signs of Reproach.

Behaviour.

99

Misbehaviour.	{ Of any kind whatsoever ; this must be left to the Discretion of the Justice, it being a general Word.
Murderers and Man-slayers.	{ Such who are likely to commit either of these Offences.
Night-walkers.	{ Those who are suspected to steal any Thing in the Night, or to commit any Misdemeanour against the Person and Goods of another.
Peace.	{ Those who break it in any Manner whatsoever.
Poor.	{ Those who refuse to take poor Children Apprentices ; but now they are to pay 10 l.
Preachers.	{ Disturbing them in their Duty ; but now they must enter into a Recognizance with two Sureties in 50 l. to appear at the next Sessions ; and upon Conviction there, must forfeit 20 l.
Poison.	{ Mingling it with Corn, and giving it to Poultry.
Quarrels.	{ Those who are guilty thereof, or breaking the Peace.
Report, or Repute.	{ Those of a bad Report or Name.
Riot.	{ Those who continue in the very Act ; but if the Riot is over, then the Enquiry must be by Jury.
Robbery.	{ Those who lie in wait, or attempt to rob another.
Suspicion.	—Persons suspected to lie in wait to rob, &c.

A Warrant for the Good Behaviour.

To the Constable, &c. of H. in the County of Suffex.

Suffex, ss. **W**Hereas I am credibly informed, That J. O. of, &c. is a Person of a lewd Life and Conversation, * and * Here put common Disturber of the Peace : These are therefore to command in his Office you forthwith to bring the aforesaid J. O. before me, or some other Justice of Peace for this County, to answer unto such Matters as shall be objected against him by R. P. of, &c. and also, that you require him the said J. O. to bring sufficient Sureties for his Good Behaviour until the next General Quarter-Sessions of the Peace, to be held, &c. And hereof fail not. Given under my Hand and Seal, &c.

Upon this Warrant, the Officer may break open an House to take the Party. *Moor's Rep. 606.*

The Recognizance for the Good Behaviour.

This may be taken without Sureties, if the Justice think fit, for 'tis discretionary in him.

Suffex, ff. **M**emozand', quod J. O. de, &c. T. P. de, &c. & T. B. de, &c. ter' die Januarii, Anno, &c. venerunt coram * nobis H. P. & R. B. Nr' duobus Justiciar' Dom' Reg' ad Pacem in Com' pzed' conserband' assignat' & in propriis personis suis recognoverunt se debere dicto Dom' Reg' modo & forma sequen' viz. pzed' J. O. in quadraginta libris & pzed' T. P. & T. B. in viginti libris separaliter bone & legalis monete Angl' de separalibus terris & tenementis bonis & catalis suis & cufustibet eorum ad opus dicti Dom' Reg' hered' & successorum suorum fieri & levari si contingat pzed' J. O. deficere in Conditione infra script'.

* Or it may be before one Justice.

See other Recognizances, Tit. Bail and Recogniz.

Cap' & cogn' Die & Anno supradictis coram nobis.

H. P. R. B.

The Condition of this Recognizance is such, That if the above bounden J. O. shall personally appear at the next General Quarter-Sessions of the Peace, to be holden for, &c. to do and receive what shall be then and there enjoin'd him by the Court; and in the mean Time, that he be of Good Behaviour towards our said Sovereign Lord the King, and all other the People of this Kingdom; that then, &c.

If it be for the Peace, then say.

To answer unto such Matter as shall be objected against him by T. P. of, &c. and to do and receive what shall be then and there enjoin'd by the Court; and in the mean Time, to keep the Peace of our Sovereign Lord the King, as well towards his Majesty, as all his Liege People; and especially towards the said T. P. and shall not do, or procure to be done, any bodily Hurt to him; that then, &c.

The Justice must certify the Recognizance at the next Sessions, or forfeits 10 l. and if the Party doth not appear, the Recognizance it self, with the Cause of the Forfeiture, must be certified in the *Exchequer*, that Process may be awarded against the Offender. *Dalt.* 190.

Sureties of the Peace. This, *Dalton* says, is very near of Kin to the good Behaviour, and therefore I have plac'd it under this Head; for the Good Behaviour includeth the Peace.

It may be demanded by the Justice, of Persons guilty in any wise of breaking the Peace.

By

By { Affrays, } Fighting, { Suspected to break the Peace.
 { Assaults, } Quarrelling, { Threatning to kill, &c.
 { Battery, } Riot, { Wounding another.

But 'tis generally demanded of the Justice at the Instance of the Party; and before he grants it, he is to administer the following Oath to him or her who requires it.

The Oath.

YOU shall swear, That you are in Fear of your Life, or of some bodily Hurt to be done or be procur'd to be done you by J. O. &c. and that you do not require the Peace of him for any Malice, Vexation or Revenge, but for the Causes aforesaid.

This being done, he may grant his Warrant to bring the Party before him, &c.

The Warrant.

To the Constable of, &c. and to the Keeper of, &c.

Sussex, ff. **W**Hereas T. P. of, &c. hath this present Day made Oath before me, That he is afraid that J. O. of, &c. will beat, wound, maim or kill him, and hath therefore prayed Surety of the Peace against him: These are therefore to command you to cause the said J. O. to come before me, or some other Justice of the Peace for this County, to find sufficient Security, as well for his Personal Appearance at the next General Quarter-Sessions of the Peace, to be holden for, &c. then and there to abide and do what shall be enjoined him by the said Court; as also in the mean Time to keep the Peace, and especially towards the said T. P. and if the said J. O. shall refuse so to do, that then you convey him to the Gaol aforesaid, and deliver him safely to the Keeper thereof: Commanding you also the aforesaid Keeper to receive the said J. O. into your Custody, and him there to keep until he shall find such Security as aforesaid.

If this Warrant is directed to a sworn Officer, he need not shew it to the Party, but he ought to tell him the Contents, and may break open Doors to take him. *Dalt.* 404.

Feme-Co-	{ 'Tis grantable against her, but she is not to be	Against whom
vert.		
Husband.	{ 'Tis grantable against his Wife, and upon his	grantable.
	Request.	
Impotent,	—For he may procure another to do that.	
Infants.	—But he is not to be bound, only his Sureties.	
Lunatic.	—Having <i>Lucida intervalla</i> .	
Wife,	—Against her Husband.	

Behaviour.

Against whom not grantable.	Cinque-Ports.	{	Not by Justices, against any one living there, but by a Writ out of the <i>Chancery</i> , directed to the Constable of <i>Dover</i> Castle, and to the Lord Warden of the Ports.	
	Blind.			—
	Deaf.			—
	Dumb.			—
What shall be a Forfeiture of the Recognizance.	Lord or Peer.	{	Not by the Justice, but by <i>Supplicavit</i> out of <i>Chancery</i> , directed to the Sheriff.	
	Affrays.			{
	Armed.	{	Generally by doing any Thing which may tend toward it, or procuring such Act to be done.	
	Assault.			{
	Batteries.	{	Without Warrant.	
	Breach of the Peace.			{
	Dog.	{	Of his Person or Goods.	
	Imprisonment.			{
	Threatning.	{	Striking any Man in the Execution of his Office.	
	Defence.			{
Goods.	{	In Corn or Grass.		
Officer.			{	1. By <i>Supplicavit</i> . Or 2. <i>Ex Officio</i> .
Threatning.	{	1. By <i>Supplicavit</i> . Or 2. <i>Ex Officio</i> .		
Trespass.			{	1. By <i>Supplicavit</i> . Or 2. <i>Ex Officio</i> .
What shall not be a Forfeiture of it. See the Title <i>Postea</i> .	{	1. By <i>Supplicavit</i> . Or 2. <i>Ex Officio</i> .		
Recognizance may be taken			{	1. By <i>Supplicavit</i> . Or 2. <i>Ex Officio</i> .

If it is taken by *Supplicavit* (which is not usual) then the Justice acts as a Minister, and must execute it in every Particular, and make a Return under his Hand and Seal.

Style 322. If *ex Officio*, then he is a Judge as well of the Sureties as in 1 Cro. 446. what Sum he binds them, how long they shall stand bound, and of other Circumstances; but it must be mention'd in the Condition, that 'tis to preserve the Peace, and that the Party shall appear at next Sessions; where the Justice must certify the Recognizance, that the Party may appear; if he neglects, he forfeits 10 l.

Moor 43. When a Man is thus bound before the Justice of Peace, if he that complains shall afterwards make Oath above, That he is in Danger, and prayeth Surety of the Peace there, he shall have it; but then a *Superfedeas* must go to the Justice of Peace who

who took the Recognizance to discharge it below : But if another Person, and not the Party himself, makes Oath above, That he believes the Party to be in Danger of his Life ; then the other must give Sureties there, and both Recognizances shall stand.

If the Peace be requir'd towards a particular Person, as well as generally towards all the King's People, then the Party may be continued by the Sessions for half a Year or more ; but if it be not at the Instance of a particular Man, then he may be discharg'd the next Sessions, if no Body appear against him.

An Indictment will not lie upon the Breach of this Recognizance, but a *Sci. fa.* *Raym.* 196.

If 'tis at the Suit of a particular Person, then he alone may release it before the Day of Appearance ; but tho' this Release is certified with the Recognizance as it ought to be ; yet it doth not discharge the Appearance of the Party, because he is bound to the King, and likewise to appear, as well as to keep the Peace, which cannot be discharg'd by the Release of the Party, and therefore he ought to appear at the next Sessions.

If he break his Recognizance, 'tis a new Offence ; and he may be indicted for that.

The Release to be written under the Condition of the Recognizance.

Memorand', That the aforesaid T. P. came before me R. B. Esq; on the 9th Day of this Instant October, and did, as much as in him lay, freely release the said Security of the Peace formerly desir'd by him, as above-mention'd, against the above-bounden J. O. In Witness whereof, I have hereunto set my Hand and Seal the said 9th of October, &c.

But without	}	By the Death of the King.
such a Release		By the Death of the principal Conuzor ;
it may be discharged,		But the Recognizance must be certified.

But the Death of the Sureties will not discharge it, for if forfeited, the Executors are liable.

I shall say little of this Writ of *Supplicavit*, because 'tis not much in Use. 'Tis true, 'tis a Judicial Writ granted out of B. R. but not without Special Cause upon Oath, and by Motion in open Court ; for 'tis in Effect an Accusation of the Justices below, as if the Party could have no Relief of them, and therefore was forc'd to apply himself to these above.

'Tis usually directed to one or more Justices, and sometimes to them and the Sheriff ; but the Justice to whom 'tis first deliver'd ought to execute it, and to make the Return. *Moor* 669.

The Form of the Writ.

Gregorius Dei gratia Anglie, &c. Rex, dilectis & fidelibus suis R. R. Ar' sociis suis Justiciari' nostr' ad pacem nostram in Com' Suff' conserband' assign' salutem. Supplicabit nobis T. P. quod cum ipse vita & mutilatione membz' suorum necnon de incendio domorum suarum per J. O. graviter & manifeste comminatus est velimus pro securitate ipsius Thome in hac parte prohibere nos supplicationi sue pzed' annuentes vobis vel tibi pcepimus firmiter injungentes, quod pzed' J. O. coram vobis vel te venire faciat ad sufficientes manucaptores inveniend' qui eum manucapere voluerint sub certa pena sibi per te vel vos rationabiliter imponend' pro qua nobis respondere volueritis vel volueris, & si hoc coram vobis vel te facere recusaverit tunc ipsum J. O. proxime Gaule nostre committatis vel committas in eadem salbo custodiend' quousq; hoc gratis facere voluerit, & cum securitatem illam sic ceperitis vel ceperis nos inde coram nobis sub sigillis vestris vel aliuscujus vestrum vel sub sigillo tuo distinde & aperte sine dilatione certificetis vel certificet & hoc breve nobis remittatis vel remittas. Teste T. P. apud Westm' &c.

By the Clause in this Writ (*pro qua nobis respondere volueritis, &c.*) 'tis discretionary in the Justice to take what Security he shall think to be sufficient, but sometimes the Sum is mention'd in the Body of the Writ, and then he is bound up to take that Security, and no other.

The Justice, to whom this Writ is delivered, may forthwith issue out his Warrant against the Party: The Form of which is,

The Form of a Warrant upon a Supplicavit.

Suffex ff. **H** P. Esq; one of the Justices of the Peace for the County aforesaid, to the Sheriff of the said County, and to the High Constable of the Rape of L. and to the Petty Constables of, &c. and to the other Constables within the said Hundred of, &c.

Whereas I have receiv'd a Writ from the King, reciting, That T. P. hath prayed His Majesty that he the said T. being in Danger of his Life, or of some other bodily Hurt, from J. O. His said Majesty would provide for the Security of him the said T. P. And thereupon His said Majesty, by the aforesaid Writ, hath commanded me to cause the said J. O. to be brought before me, to find Security for the Peace, or to commit him to Gaol, if he shall refuse so to do, as by the said Writ, Relation being thereunto had, it doth and may more at large appear: Therefore I do hereby command you, and every of you, immediately upon Receipt hereof to apprehend the said J. O. and cause him to come before me, to find sufficient Sureties for the Peace; to be from henceforth kept by him, as well towards His said Majesty, as all
his

his People, and more especially towards the said T. P. And if the said J. O. shall refuse so to do, that then you convey him to the common Gaol for the said County in H. there to remain until he shall willingly do the same. Given under my Hand and Seal, &c.

The Party must be brought before no other Justice but him who grants this Warrant; neither can any other discharge him by a *Supersedeas*.

When he is brought before the Justice, and he hath taken Security, as directed by the Writ, then he may return it thus, writing on the Back therefore:

Executio istius brevis patet in quadam Scheda huic brevi annexa.

Then he may file the Return to the Writ thus, in a Piece of Parchment by it self.

Ego H. P. Ar' un' Justiciar' pacis in Com' Suffex, conservand' Assign' Dom' Reg' humillime certifico quod virtute brevis infrascript' mihi per infranominat' T. P. pzius deliberat' causabi J. O. in dicto brevi nominat' personaliter venire coram me apud, &c. 9 Die Octob' ultimo elaps. & adtunc & ibidem etiam causabi pzetat' J. O. ad invenierend' sufficien' securit' pacis juxta formam & effectum brevis pzet'. In cuius rei Testimonium huic Schedule manum & sigillum meum apposui 21 Die Octob' Anno Dom' 1701.

The Justice need not return the Recognizance, which is the Security by him taken as aforesaid, without a *Certiorari* for that Purpose; and when he recites that Writ, then he may write on the Backside of it:

Ego A. P. Ar' un' Justiciar', &c. virtute brevis infrascript' tenorem securitatis pacis cuius infra fit mentio Dom' Reg' humillime certifico pout in Schedul' huic brevi annex'. Dat' 19 Die Octob' Ann' 1701.

Then write the Recognizance *verbatim*, and file it to the *Certiorari*, and so send it up together.

When this is done the Justice may grant a *Supersedeas*, either in *Latin*, reciting the *Supplicavit*, or without it.

The Form of the *Supersedeas*.

To the Sheriffs, Bailiffs, Constables, and other of His Majesty's Officers within the County of *Suffex*, and to every of them.

Suffex, ff. **W**Hereas J. O. of, &c. hath personally come before me T. P. Esq; one of his Majesty's Justices of the Peace for the said County, and hath found sufficient Sureties
* well

Bigamy or Poligamy.

* The best Way is to name the Parties, and in what Sums bound; but the Superfedeas is good without it.

** well and truly to keep the Peace towards His said Majesty, and all his People, but more especially towards T. P. of, &c. and also that he shall personally appear before the Justices of the Peace at their next General Quarter-Sessions to be held for, &c. Therefore on the Behalf of His said Majesty, I command you, and every of you, to forbear to arrest, imprison, or otherwise molest the said J. O. for or by Reason of the said Occasion, and no other; and if he shall be already taken or imprisoned for the same, that then you cause him to be forthwith discharged. Given under my Hand and Seal, &c.*

The Party may also move the Court of B. R. for a *Superfedeas*, but this must be upon a *Supplicavit*, and not where the Justice proceeds *ex Officio*; because by the Statute of 21 Jac. c. 8. it must appear to the Court, that Process of the Peace, or Good Behaviour, is required against the Offender in that Court by the Party grieved, out of which the *Superfedeas* is desir'd.

A Mittimus for Breach of Peace.

To the Keeper, &c.

Middlesex, ff. **I** Send you herewithal the Body of J. O. of, &c. whom I charge, and require you to take into your Custody, for several Misdemeanours committed by him against the Peace; and you are hereby required to keep him the said J. O. safely in the common Gaol, until he shall procure two sufficient Persons to be bound with him in a Recognizance to the King's Majesty; that is to say, each of the said Sureties in the Sum of 10 l. and himself in 20 l. to appear at the next General Quarter-Sessions of the Peace to be holden, &c. and in the mean Time to be of the Good Behaviour. And hereof fail not. Given under my Hand and Seal, &c.

Bigamy or Poligamy.

1 Jac. c. 11. **T**HIS was prohibited by the Statute of 1 Jac. by which 'tis made Felony to marry a second Husband or Wife, the first being living.

3 Inst. c. 27. My Lord Coke, in his Exposition upon this Statute, hath made several Exceptions out of it.

1. That this Law doth not extend to a Person whose Husband or Wife is beyond Sea, or to such who shall be absent from one another in England, for the Space of seven Years; with this Difference, That if the Abode be beyond Sea, then though either of them have Notice that the other is living, such Notice is not material: But if in England, 'tis otherwise; for in such Case the Party is not exempted from the Penalty of the Statute.

2. That

2. That it doth not extend to Persons divorced à Mensa & Thoro.

3. Nor to such whose former Marriage is by any Sentence in the Ecclesiastical Court declar'd void.

And therefore where a Man was divorced *Causa Adulterii*, and March 101. married another Wife, the first being then alive, this was held within the *Proviso* of that Statute; for the first Marriage is sever'd by the Divorce: But if it had been *Causa Savitia*, then he could not have married again; because that is only a Temporal Separation till the Anger is past.

4. Not to those who have been married within the Age of Sid. 171. Consent, viz. the Man under Fourteen, and the Wife under Twelve, who afterwards disagree to that Marriage.

It has been likewise held, That if a Man marries a Woman beyond Sea, and is living, and his Wife marrieth another Husband in *England*, this is not within the Statute; because the first Marriage cannot be tried here.

The Offenders have Clergy.

The Indictment.

Suffex ff. **J**URAT, &c. quod J. O. nuper de, &c. 16 die Decemb' Anno Regni, &c. apud L. in Com' predict' durit in uxorem suam quandam H. P. Spinster, quodq; predict' J. O. postea scilicet 21 die Junii, Anno Regni, &c. apud C. in Com' predict' felonice durit in uxorem suam quandam E. R. Spinster predict' H. P. priore uxore adtunc & ibidem superstite, & in plena vita existent' viz. apud O. predict' in Com' pred' contra pacem dicti Domini Regis nunc coron' & dignitat' suas, necnon contra formam Statut' in hujusmodi casu edit' & probis.

Blacks. See Felony.

Billets. See Fuel.

Bows. See Dogs.

Blasphemy.

ANY Person bred in, or professing the Christian Religion, & 10 and who shall by Writing, Printing, Teaching, or ad-Will. vised Speaking, deny any one of the Persons of the Trinity; Chap. 32. or assert, That there are more Gods than one; or deny the Christian Religion to be true, or the Holy Scriptures to be of Divine Authority; and be convicted thereof by Indictment or Information at *Westminster*, or at the Assizes, he shall be disabled to have any Office, and shall not enjoy that Office which he hath, but the same is made void.

If

Bone-Lace.

If convicted a second Time, he shall be disabled to sue in any Court, or to be a Guardian, or Executor, or Administrator, and be incapable of any Legacy or Gift, or of any Office, and shall be committed for three Years without Bail.

Conviction must be by Oath of two credible Witnesses, the Information for *Words spoken*, must be by Oath before a Justice of Peace within four Days after spoken: And the Prosecution of such Offence must be within three Months after the Information. But if the Convicted Person, for the first Offence, shall, within four Months after his Conviction, acknowledge and renounce the same in that Court where he was convicted, he shall be discharged from the said Penalties.

Bone-Lace.

14 Car. 2.
c. 13.
8 & 9 Will.

THIS being formerly imported from Foreign Parts, but the *English* having gotten great Skill and Dexterity in making it; therefore it was thought fit to prohibit the Importation of *Foreign Bone-Lace, Cut-Lace, Loom-Lace, Needle-work and Point*; and not only the Importer, but he that sells, barterers or offers it, or causes it to be offer'd to Sale or Barter, or who shall knowingly keep it for Sale, or for the Use of any Importer or Dealer in the said Commodities, forfeits 20 s. per Yard, together with all the said Goods.

The Importation, Selling, &c. the said Goods, is declar'd to be a *Common Nuisance*, and the Goods may be seized, and the Offender prosecuted by any Person.

And 'tis lawful for any Man, with a Warrant from a Justice, and in the Presence of a Constable, &c. in the Day-time, to enter the House, Shop, &c. of any Person dealing in Lace (*and not otherwise*) to search for, and seize the said prohibited Goods; and, in Case of Resistance, to break open the same, and Chests and Trunks, &c. but the Person complaining must make Oath before the Justice, that he hath Reason to suspect or believe the Goods are there.

These Goods, when seized, must be carried to the next Custom-House; and if they shall be condemned, must be sold by Inch of Candle, upon Notice in Writing fixed on the Custom-House ten Days before the Sale; and shall not be delivered to the Buyer, until he give Bond to the King in double the Value to export them within six Months after the Date of the Bond.

But if such Bone-Lace, &c. is carried to a Custom-House as *Foreign*, and the Seizor, upon farther Examination, shall believe it to be *English*, then he must give publick Notice of the said Seizure, by fixing a Paper on the Custom-House Door, or
any

any other publick Place, and what Quantity and Quality of Goods were seized; and if no Person after ten Days will prosecute for the same as *Foreign*, then they shall be delivered back to the Proprietor, he (or some known Person in his Behalf) making Oath before a Justice, that the Goods, to the best of his Knowledge and Belief, are *English* made; and this must be certified by the Justice to the next Sessions.

If any Question should be made, Whether the Bone-Lace, &c. be made in *England* or beyond Sea, the Proof that it was made *here*, shall be upon the Importer, Retailer, &c.

The Forfeitures * over and above any Penalties by any former Act, or to be recovered in the Courts of *Westminster* by Action of Debt, &c. and Costs of Suit; one Moiety to the King, the other to the Prosecutor. See the Act. * By 14. Car. 2. 'tis 50l. and Forfeiture of Goods.

Bandy. See Ale-house.

Brass and Pewter.

THESE Metals are prohibited by the Statute of 19 H. 19 H. 7. c. 6. 7. to be exchanged or sold but in a Market or Fair, or in the Shop of a Pewterer or Brasier, except desired by the Buyers of such Wares, on Pain of 10l. for each Offence, to the * King and the Prosecutor; to be recovered in any Court of Record, &c. * 25 H. 8. c. 9.

The Justices in *Michaelmas* Sessions may appoint two Searchers of Brass and Pewter for the County; and the Head Officer may do the like in every Corporation.

Bread. See Weights and Measures.

Breaking open Doors. See Force.

Brewers.

BY the Statute of * 23 H. 8. a Brewer is prohibited to be a Cooper, and if he maketh a Vessel not marked by a Cooper, and puts Beer therein, he forfeits three Shillings and four Pence. They must sell their Beer and Ale at such Rates as shall be thought fit by the Justices of the Peace, in Pain to forfeit for every Barrel six Shillings; for every Kilderkin, three Shillings and four Pence; a Firkin, two Shillings; and for every greater Vessel, ten Shillings; and lesser, twelve Pence: The Forfeitures to be divided between the King and Prosecutor. * Cap. 4.

But

But several later Statutes have been made, which relate to Brewers; all which may be reduced under these Heads:

1. What Quantity of Beer or Ale their Vessels shall contain.
2. What Duty is given to the King upon each Vessel.
3. What is to be done in order to make Entries.
4. The Punishment of Misentries, or short Entries.
5. The Punishment of Frauds in Brewers.
6. Matters relating to them and the Gaugers.

1. Ale-Barrel must contain	32	} Gallons.
Kilderkin	16	
Firkin	8	

* W. & M	* Beer-Barrel	36	} Gallons.
	Kilderkin	18	
	Firkin	9	

Duties to
the King.
12 Car. 2.
cap. 23.

2 *Anno 12 Car.* the Parliament gave the King, for every Barrel of Ale or Beer above the Price of six Shillings, the Duty of one Shilling and three Pence; and if under that Value, then three Pence and no more, during Life.

The next Year the Court of Wards and Liveries was taken away, and in Lieu thereof, the Parliament gave the King, his Heirs and Successors, the like Duty.

But the first Duty being determined by the Death of that King, the Parliament gave his Brother and Successor, King *James*, that Duty during Life.

Afterwards 1 *Will. & Mar.* an Additional Duty of Nine pence for every Barrel above the Value of six Shillings and eight Pence, and under that Value, three Pence, was given to the King, and to continue for three Years.

Anno 2 Will. & Mar. the Duty which was given to the former Kings, and which was determined by the Death of the one, and the Abdication of the other, was given to *Will. & Mar.* during their Lives, and the Life of the longest Liver; and in the same Year, those Duties were doubled for one Year.

Likewise in that Year a farther Imposition was laid, of one Shilling and six Pence on every Barrel of Ale above six Shillings Value; and if under, six Pence, and no more, and this was to continue for four Years, which expired in the Year 1694.

But in the Year 1692, which was in the fourth Year of *Will & Mar.* the Additional Duty of nine Pence per Barrel was given for ninety-nine Years, to be a Fund for a Million of Money, &c.

Entries.
12 Car. 2.
c. 23.

3. Every common Brewer ought to make his Entry once in a Week, and every Ale-house-keeper, Inn-keeper and Victualler, once in a Month: This must be of Liquors which they brew or retail, and the Entry must be at the Excise-Office; and in

in Default thereof, a common Brewer and Inn-keeper forfeits five Pounds, and a Retailer twenty Shillings.

If they pay not the Duty within a Week, and Retailers within a Month, they must pay double.

Offenders in London against this Law, may be tried by the Chief Commissioners, or Commissioners of Appeal, and in all other Places by two Justices or more near the Place; and if they neglect or refuse by the Space of fourteen Days after Complaint, then by the Sub-Commissioners: But in this last Case an Appeal lies to the Sessions, whose Order is final.

Justices or Sub-Commissioners may give Judgment upon Proof by one Witness upon Oath, or Confession of the Party, and may issue out a Warrant to levy the Forfeitures by Distress, to be sold within fourteen Days, and for Want thereof may commit the Offender; but they may mitigate the Forfeitures, so it be not less than double the Value of the Duty, besides Costs and Charges.

12 Car. 2.
cap. 24.
Forfeits
10l. and
Retailer
40 s. per
Month.

A Warrant for not making an Entry of the Duty.

To the Constable, &c.

Suffex. ff. **W**Hereas Complaint hath been made unto us whose Names are under-written, being Justices of the Peace for the County aforesaid, That T. P. of, &c. in the said County, common Brewer, hath not made a due Entry at the Office of Excise, of all Liquors by him brewed, according to the Form of the Statute in that Case made and provided; which Complaint we have examined, and find the same to be true: These are therefore to require you to levy the Sum of * 10 l. upon the Goods and Chattels of the said T. P. and to sell the same, if not redeemed within fourteen Days next ensuing, and that you pay the Money arising by such Sale, to such Person or Persons as by the said Statute is limited and † directed, rendering the Overplus (if any) unto the said T. P. and if you cannot find sufficient Distress, that then you forthwith certify us thereof, that we may proceed further concerning the Premises: And therefore fail not. Given under our Hands and Seals, &c.

* It may be mitigated to any Sum above double the Value of the Duty, besides Costs, &c.

† Viz three fourths to the King, the other the Informer.

1 W. & M.

The Justices of Peace, upon any Information for an Offence against the Laws of Excise, may summon any Person, other than the Party accused, to appear before them to give Evidence; and the Person making Default forfeits 10l. to be recovered by Action of Debt, &c. in the Courts of Westminster; one Moiety to the King, the other to the Prosecutor.

The Summons to give Evidence.

Suffex, ff. **T**O T. E. of, &c. in the County of, &c. Whereas we are informed, That T. P. of, &c. hath on the sixth Day of November past, brewed and sold Ale and Beer without making a due Entry thereof, according to the Statute in that Case made and provided: These are therefore to require you to appear before us being Justices of the Peace for the County aforesaid, on the 10th Day of this Instant Month, at, &c. to testify your Knowledge concerning the Premises: And hereof fail not at your Perils. Given under our Hands and Seals, &c.

Allowance. By the Statute 12 Car. 2. cap. 8. a Brewer is to have the Allowance of Leakage, viz. Three Barrels in twenty-three of Beer, and two Barrels in twenty-two of Ale, which is now by a subsequent Statute reduced to two and half within the Week-
 7 & 8 Will. ly Bills of Mortality; but if he makes a false Entry, and is convicted before two Commissioners, he forfeits this Allowance for six Months.

But such who come to make an Entry, and pay the Duty, and tender the same, tho' not actually paid; yet if they can prove it by one Witness, shall not be liable to any Forfeiture.

Information shall not be brought for any Mis-entry, but within three Months after the Offence committed, and Notice thereof given to the Defendant in Writing within a Week after the Information entred.

Punishment of Frauds, &c.
 15 Car. 2. cap. 11.
 But by Stat. 8 & 9 Will. the Forfeiture is 200l. for each Vessel.

By altering, enlarging or fitting up, without giving Notice to the next Office of Excise, and using for making Beer, &c.

any { Back, Cooler, Copper, Fat, Tun. }

Forfeiture is 50l. for every Tun or Fat, one Third to the King, another to the Poor, &c. another to the Informer, &c.

Occupier of an House, where any Brewer keeps a private Store-house for laying Liquors in Casks, forfeits 50l. and the Liquor concealed may be seized, and delivered to the Overseer of the Poor to be distributed amongst them.

By converting small Beer into strong, after an Account taken by the Gauger, and delivering it out without giving Notice to the Gauger, or by concealing any Beer from Time to Time, forfeits 20 s. per Barrel.

By suffering another Brewer to use his Brew-house after he hath compounded for the Duty, without giving Notice thereof, and paying the Excise, the Brewer and the Person for whom 'tis brewed, forfeits 5l. per Barrel to the King and Informer.

By

By bribing a Gauger, or by taking any Bribe, the Forfeiture is 10*l*. This Offence must be proved before two Justices, and by two Witnesses.

By denying the Gauger to enter, and selling after he is forbid by the Gauger, without paying the Duty, the Forfeiture is 10*l*.

By mixing, concealing, or conveying Worts contrary to the Act 15 Car. 2. forfeits 20 *l*. per Barrel.

Officer suspecting any Fraud, may in the Day-time, and in Presence of a Constable, break open a Door of any Person to follow the * Pipe : He who opposes him, forfeits 20 *l*. to be recovered as any Forfeiture by any Statute of Excise, or by Action of Debt, &c. one Moiety to the King, the other to him who shall discover and sue for the same.

But by the Statute of 8 & 9 Will. the Person opposing the Gauger, forfeits 50 *l*. to be recovered by Action of Debt, &c. one Moiety to the King, and the other to the Informer.

An Officer in the Day-time, as aforesaid, may break up the Ground in any Distilling House, or the Ground near adjoining, or any Wall, Partition, or other Place to search for a Pipe, Stop cock, or other private Conveyance ; and if he finds any such, he may break up the Ground, House, or Wall, or other Partition, or Place, through or into which such Pipe shall lead, and may break or cut the Pipe.

But if upon Search no such Pipe can be found, or other private Conveyance, then such Officer shall make good the Ground, House, and Wall, &c. or make such Satisfaction to the Owner, as two next Justices, *Quorum unus*, shall adjudge ; or the Party may bring his Action.

Opposing the Officer, the Forfeiture is 100 *l*.

If the Gauger or Officer shall suspect any private Still to be set up in any House, he may make Affidavit of it before a Justice of Peace ; in which Affidavit he must set forth the Grounds of his Knowledge or Suspicion ; and then he may, in the Day-time as aforesaid, and by a Warrant from that Justice before whom he made Affidavit, break open the Door, or any Part of the House, and enter and seize the Stills, and detain them in that House, or elsewhere ; and if not claimed within 20 Days after the Seizure, they may be sold ; one Moiety of the Money arising by such Sale shall be to the King, the other to him who shall discover and seize the same.

But if claimed within twenty Days, then the Person claiming it, shall for every Warehouse in which such still shall be found, and for every Still also, forfeit 200 *l*.

But if no Still be found, then the Officer must make good the House, or pay such a Satisfaction as two Justices as aforesaid shall adjudge.

The Brewer must tell the Gauger how much strong Beer and Ale, and how much small, he intends to make before the Guile

1 W. & M.
7 & 8 Will.
& M.
* Keeping
a Pipe un-
derground,
forfeits for
every Of-
fence 100 *l*.
per Stat.
8 & 9 W.
Distillers.
10 & 11 W.

is cleansed or removed : If he refuses, the Gauger may return the whole strong, and the Brewer forfeits for ever Barrel 20 s. And if he encreases his Guile after he hath told the Gauger how much he intends to brew, he forfeits for every Barrel increased 5 l. and the Servant assisting him 20 s. and in Default of Payment, three Months Imprisonment.

If after carrying out the Drink, he mix small Beer with the strong on the Dray, or elsewhere, forfeits 5 l. for every such Offence ; *per Statute of 7 & 8 Will.*

If a Brewer, Inn-keeper, or Victualler, without giving Notice to the Gauger, shall cleanse or carry out of a Brewhouse any Part of the Wort before the whole is brewed, and put in Tuns, Backs, or Coolers, and until the Gauger shall or might take an Account of it, he forfeits 40 s. *per Barrel.*

Delivering Wash to Distillers, without giving Notice to the Gauger, forfeits 20 s. *per Barrel.*

Gauger.

A Gauger may enter into an House or Brewhouse in the Day-time, or at Night, with a Constable, and stay there whilst the Brewing is there, and may take an Account of the Worts, and see the strong and small Beer cleansed, and gauge the Tun, or take an Account of the Malt from which the Worts are made ; and if refused or not suffered by the Brewer, he forfeits for every Offence 20 l. and the Informer is not to prove that the Brewer carried out any Wort before he paid the Duty. *7 & 8 Will.*

He may taste the Drink upon the Dray, and enter the Cellar of any Inn-keeper, or Victualler to taste it ; and if they will not permit him, they forfeit for each Offence 5 l.

8 & 9 W.

He must within three Days after every Week leave with the Brewer, or his Servant, a true Copy under his Hand, of the Charge made upon the Brewer that Week : If he do not, or shall charge the Brewer more than is in that written Copy, he shall forfeit 10 l. to be recovered by any Person who will sue for the same in the Courts of *Westminster.*

A Warrant against a Brewer who maketh a false Entry, by which the Allowance of Leakage is taken away for six Months.

To the Constable, &c.

22 Car. 2. Suffex, ff. cap. 23.

W Hereas N. V. of, &c. Common Brewer, hath this present Day been duly convicted before us, that he wilfully made a false Entry of three Barrels of, &c. by him lately brewed, contrary to the Form of the Statute in that Case made and pro-

provided: And whereas the Allowance appointed to be made for Waste by Filling and Leakage, are * three Barrels upon every twenty-three * Per 1 W. Barrels of Beer: Which Allowance, in Case of false Entry, and Con- & M. c. 24. viction thereof as aforesaid, shall be forfeited for six Months. We do therefore adjudge, that the said N. V. for this his Offence, shall forfeit and lose the said Allowances for the Space of six Months next ensuing. Given, &c.

'Tis two Barrels and an Half within the Weekly Bills. Two

Justices in the County, and two Commissioners within the Limits of the Chief Office in London. Proof by one Witness upon Oath. 15 Car. 2. cap. 11.

A Warrant to levy Ten Pounds against such who bribe a Gauger, &c.

To the Constable, &c.

Suffex, ff. **W**Hereas it hath been duly proved before us, H. P. and R. B. two of his Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. common Brewer, did by Money, Fees, and other Rewards, bribe and corrupt W. B. Gauger, to make a false Return unto the Office of Excise, of Beer and Ale exciseable, and made and brewed within his Division; by Reason whereof he hath forfeited the Sum of 10 l. for the said Offence. These are therefore to charge and command you, &c. to levy the aforesaid Sum of 10 l. upon the Goods and Chattels of the said T. P. by Distress and Sale thereof, rendring to him the Overplus, if any shall happen to be. Given, &c.

The Offender may be committed if no Distress can be taken: The like Warrant, Mittimus and Forfeiture, for the Gauger or Officer who receives a Bribe relating to the Excise: But now per Statute 1 W. & M. 'tis a Forfeiture of his Office.

The Mittimus.

To the Constable, &c. and to the Keeper, &c.

Suffex, ff. **W**Hereas the Constable of, &c. was by a Warrant Two Justices under our Hands and Seals, required to levy the Sum of 10 l. upon the Goods and Chattels of T. P. by him forfeited for, &c. And whereas we are credibly informed by the said Constable, that the said T. P. hath not sufficient Distress whereon the said Sum can or may be levied: These are therefore to require you, &c. to take the said T. P. and to convey him to the Common Gaol aforesaid, and there to deliver him to the Keeper thereof: Requiring you also the

1 Lut. 499.

Brewers. Bridges.

aforesaid Keeper to take the said T. P. into your Custody, and him there to keep until he pay the said Sum of 10 l. Given under our Hands, &c.

An Indictment against a Brewer, for brewing Strong Beer, without giving Notice to the Gauger.

Suffex, ff. **J**U B', &c. quod J. O. de L. in Com' p'res, Pandorator, duodecimo die februarii, Anno, &c. apud L. p'res in Com' p'res clam & secrete pandorator fuit (Anglice, brewed) viginti cados (Anglice, Barrels) optimi poti lupulat', (Anglice, Strong Beer) & quod postea, scil' eodem duodecimo die februarii, Anno, &c. vi & armis, &c. apud L. p'res, in Com' p'res, eisdem 20 cados optimi poti lupulat' (Anglice, Barrels of strong Beer) clam & secrete, & absque aliqua notitia inde dat' alicui Gaugeatori vel al' Officiar' dicti Dom' Reg' nunc de Eccis', diversis personis ignot' vendidit & utterabit, ea intentione ad defraudand' dictum Dom' Reg' nunc de suo debito Eccis' dict' 20 cadorum optimi poti lupulat', (Anglice, Barrels of strong Beer) in magnam deceptionem dicti Dom' Reg' ac contra pacem dict' Dom' Reg' nunc Coron' & Dignitat' suas, &c.

Bridges.

THE Statutes which concern the Building, Repairing, &c. Publick Bridges, are,

- 9H.3. c.15. 1. *Magna Charta*, by which it is enacted, That neither any Town or Freeman shall be distrain'd to make Bridges or Banks, but such who anciently and of Right have been accustomed to do it: This my Lord Coke says was declarative of the Common Law.
- 22 H.8. c.5. 2. The Statute of H. 8. by which four Justices *Quorum unus* may in their Sessions enquire, hear and determine the Annoyances of Bridges, and of Highways adjoining within 300 Feet; and may charge those who ought to repair the same, by sending Process, and imposing such Penalties as they shall think fit, if the Persons are known.

And if it cannot be known what Persons or Lands ought to repair, it shall be done by the County, Riding or Corporation, within which the Bridge or Highway are situate; and if within two Precincts, then by the Inhabitants of each, by paying their respective Parts.

An Information was exhibited against two Men in the County of *Huntingdon*, in the Name of all the County, that they *debent & solent* to repair a Bridge, and thereupon they were at Issue; and at the Trial, no Evidence was produc'd to maintain the Information, because by the Statute of H. 8. the County must repair; and if any particular Person ought to do it, the County must shew it, to discharge themselves; but there was no Evidence given that *Huntingdon* used to repair the whole, for Part of the Bridge was in *Bedfordshire*, and they used to repair Half. *Poph. 192.*

Information against the Inhabitants of the County of *Nottingham*, for not repairing a Bridge on the *Trent*, between *Newark* and *Mansfield*, which Time out of Mind had been repair'd by them; two of the Inhabitants in the Name of themselves and the Rest, plead, That the *Lord Limmington* and other Persons, Owners of Lands call'd *Bridgelands* ought to repair, &c. *Ratione Tenure*, and traverse that the Inhabitants Time out of Mind have or ought to repair. The Attorney General replied that the Inhabitants ought to repair, and travers'd that the *Lord Limmington* ought; upon which they were at Issue, and upon a Trial at Bar by a *Middlesex Jury*, it was found against the Inhabitants. ² Lev. 112.

Nota. They did not plead Not guilty, but that another ought to repair; and this was held good, *per Hale, Ch. Justice.*

Before I proceed to the Manner of Taxation, 'tis to be consider'd who are liable to be tax'd; and of those, there are two Sorts,

1. By Tenure of their Land.
2. By Toll-taking.

1. By Tenure: And as to that, 'tis generally true, that a particular Person shall not be bound by Prescription to repair, &c. if it be not in Respect of the Tenure of his Land, or of some Profit; for if a Man and his Ancestors have Time out of Mind repair'd, such Usage shall conclude him and his Heirs, because it shall be suppos'd to be done at first by Reason of his Tenure in the Lands; so 'tis likewise of a Corporation, Spiritual or Temporal.

The Defendant was indicted at the Sessions for not repairing the East Part *communis pontis pedalis continen' dimidium pontis in communi semita*. After Judgment against the Defendant, and a Writ of Error brought, it was objected that the Sessions had no Jurisdiction in Cases of Bridges, but only of such which are in the Highway, and that it ought to be set forth in the Indictment, how many Foot in Length, and how many in Breadth the Defendant is to repair. 'Tis true, there may be *communis semita* not in the Highway, but still the not Repairing it may be a Nuisance, and in such Cases the Justices have a Power by the

the Statute 1 Ed. 3. and not by the Statute 22 H. 8. Of this Matter the Court doubted, but they held *Dimidium Pontis* was certain enough, and revers'd the Judgment, because it ought to be *Pons pedestris*, and not *pedalis*, for that signified a Bridge a Foot in Length.

Indictment against the Defendant for not repairing *quendam communem pontem*, situate in *quadam communi semita pedestri*, leading from such a Place to such a Place, which the Defendant is bound to repair *ratione Tenure*, and which was in great Decay, *ad commune necumentum*. After a Verdict and Judgment against the Defendant, and a Writ of Error brought, the same Objection was made as in the Case last mention'd, that this Indictment would not lie, because it did not appear that this Bridge was in *Alta Via Regia*, and by the Statute 22 H. 8. the Justices have only Power to judge of Decays of Bridges in Highways. But adjudg'd, That the Word *Highway* is the Genus of all publick Ways; so that if there is a Common Foot-way, the Indictment will lie. 'Tis true, the Word *Communis* doth not *ex vi termini* imply that it is common to all, the Word *publicus* had been better.

Hardres
331.

Upon an *English* Bill in the *Exchequer*, to have Contribution towards the Repair of a publick Bridge in the *Manor* of *Sunning*, against the Freeholders and Copyhold Tenants of that Manor, and against those who had purchased the Demesnes of the Manor at several Times, the Charge being on the Plaintiff as Lord of the Manor *ratione tenure*; adjudg'd that nothing is Part of the Manor but *Demesnes* and *Services*; that they who have purchased any Part of the *Demesnes* are chargeable, but that the ancient Tenants both Freeholders and Copyholders are not.

1 Salk. 358:
Mod. Cases
1509

Adjudg'd upon a Trial at Bar on an Information for not repairing a *Common Bridge*, which the Defendants were bound to repair; that if a Manor is held by the Tenure of repairing a Bridge or Highway, which Manor afterwards comes into several Hands, that in such Case every Tenant of every Parcel either of the *Demesnes* and *Services* is liable to the whole Charge, but shall have Contribution of the Rest. 'Tis true, the Lord of the Manor may agree with every Purchaser to discharge him from repairing; but such an Agreement will not alter the Remedy which the Publick may have. It only binds the Lord, who shall never apportion the Charge, and make the Remedy for the Publick more difficult. Neither shall he take away the Remedy by Alienations to Persons unable to pay; and tho' the Manor comes to the Crown, the Charge shall continue.

There was an Indictment against Sir *John Bucknall*, for not repairing a Bridge, which he was bound to repair, *eo quod* he was *Dominus Manerii*, &c. And this was quash'd after Conviction, because it is not said that he held the Manor by the Service

vice of repairing the Bridge, and then he had been obliged *ratione Tenura*; but he is not chargeable meerly as Lord of the Manor.

The County of *Wilts* being indicted for not repairing of *Laycock* Bridge, they pleaded, That the Village of *Laycock* ought to repair it; and it was given in Evidence, That there was an Order of Sessions for *Laycock* to repair it; but that was held no Evidence to conclude *Laycock*, because where the Persons are known who should repair, the Sessions have no Power to make such an Order, but must tax the Inhabitants, &c.

1 Salk. 159.
Mod. Cases
191, 306.
Any Inhabitant of the County may be a Witness, but the Jury must be of the next County.

But generally, and of common Right, the whole County is liable, and not the Owners of the Land adjoining.

If Evidence can be given that a Man hath once repair'd, tho' not for many Years, yet those who have his Estate in the Land shall be liable, because it shall be suppos'd to be done by Reason of his Tenure, unless some other Cause can be shewed.

Dalt. 48.

And when a Charge is by Reason of Tenure, every Owner of the Land is to be charged proportionably.

Where Lands are given towards the Repair of Bridges, it must be let by the Trustees for the best Rent, &c. without taking any Fine; and if the Trustees are negligent, the Justices may do it. 22 Car. 2.

In those Cases where Persons are bound to repair by Tenure, if the Party be indicted for not repairing, and found guilty, the King may pardon the Fine, but not the Offence, for that continues still, and he may be indicted again; for though the Suit is in the Name of the King, yet the Offence is prejudicial to the Subjects; and for that Reason it cannot be pardoned.

12 Rep. fol. 30.

2. By Toll-taking.

He who hath any Profit for passing over a Bridge, ought to repair it, because *sentit commodum*, and therefore he ought *sentire onus*; so it is if a Bridge was built to serve a private Purpose, which afterwards became necessary for the Publick; as by making a new Current to a Mill, and a Bridge over it, the Owner of the Mill, and not the County, must repair it.

And in either of these Cases, he who repairs the Bridge, must likewise repair the Way at each End of the Bridge, and they may enter into the Lands contiguous, and lay Stone, Timber, and other Materials there, which are necessary for Repairing, without being subject to an Action at the Suit of the Owner of the Soil, because it is for the Common Good.

If it cannot be known who ought to repair, upon an Inquiry The Man made by the Grand Jury in Sessions, then they are to present ner of Tax. that the Bridge is in Decay, and to conclude it thus, *viz. Et action.*

ulterius jur' prad' presentant quod prorsus nescitur qua Persona, que Terra,

Terra, five Tenentes, aut corpora politica, eundem pontem aut aliquam inde parcellam ex jure aut antiqua consuetudine reparare debent, aut consueverunt.

When this is done, the Justices may call the Constables of every Parish, &c. and if they are not there, may send Warrants for them to appear at a particular Time and Place to make a Tax; for by the Statute of 22 H. 8. the Justices, without the Constables or two able Inhabitants of every Parish, cannot make a Tax.

But contrary to the Statute, the usual Course is to charge every Hundred with a Sum in gross, and to send it to the High Constable of each Hundred, who send their Warrants to the Petty Constables to gather it; by Virtue whereof, they assess the Inhabitants in particular Sums, and collect it, and pay it to the High Constables, who bring it to the Sessions.

This is expressly against the Statute, but 'tis done to ease the Constables and Inhabitants of their Attendance, and being generally submitted unto. *Communis Error facit jus.*

1 Anne.

But because this usual Way of Taxing was against Law, and for that in many Places more Money was levied than was really necessary for Repairing, and also because the Money was misemploy'd when levied; therefore by a late Statute these Matters were remedied.

By this new Act, the old Statute 22 H. 8. is recited and confirm'd in every Thing, unless in such as is alter'd thereby.

And by this Statute, the Justices in Sessions, upon such Presentment made as is before-mention'd, may assess every Town, Parish or Place within their Commission, in Proportion, as usually hath been assessed towards the Repair of the Bridge.

The Money thus assessed is to be levied by the Headborough of every respective Parish, or by such as the Justices in Sessions shall appoint.

When it is levied, the Headborough must pay it to the High Constable of every Hundred within six Days after 'tis collected, and they must pay it to such Persons as the Justices by a Sessions Order shall appoint to receive it; and this Payment must be within Ten Days after the Receipt by the said Constables.

And then 'tis to be employ'd according to the Order and Directions of the Justices, for and towards mending the Bridges.

Now the Manner of levying it is this, *viz.* The Headborough must demand it of the Party, and if 'tis not paid within ten Days after the Demand, he may levy it by Distress, and Sale of his Goods, rendring the Overplus, the necessary Charges of the Distress being first deducted.

And if any of the Officers neglect to assess, collect, or pay the Money, they forfeit 40 s. for every Offence.

So likewise if the Receiver, who is appointed by the Justices, pays any Money without this Order, he forfeits 5 l. which must be applied to repair the Bridge.

And

And no Fines upon Presentments or Indictments, &c. shall be return'd into the *Exchequer*, but shall be paid to such Receiver.

Also all Matters concerning repairing and amending Bridges shall be determin'd in the County where they lie, *and not elsewhere*; and no Presentment or Indictment shall be remov'd by *Certiorari*.

'Tis likewise provided, that the Justices may allow to any Person concern'd in Execution of the A& 3 *d.* in the Pound, out of the Money collected; and that if any Suit is brought for putting the A& in Execution, the Defendant may plead the General Issue, and give the A& of 22 H. 8. and this A& in Evidence; and if he has a Verdict, shall have double Costs.

By this A& 'tis further provided, That the Evidence of the Inhabitants of such Places where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information or Indictment, &c.

And lastly, it takes Notice of some private Bridges; as for Instance, the Statute of 23 *Eliz.* for rebuilding *Cardiffe* Bridge is repealed, and that from henceforth that Bridge shall be reputed a Common Bridge, and repaired by the County of *Glamorgan*.

That the Wardens and Assistants of *Rochester* Bridge shall be chosen every Year on *Friday* in the Week next after *Easter* Week.

And likewise that Money is to be levied for rebuilding and repairing the Piers in the Port of *Whitby*.

An Indictment where a Bridge is in Decay, and it is not known who shall repair, &c.

JUR' &c. quod pons publicus & communis situs in alia via regia super * flumen de L. infra Parochiam de H. in * Or, *supra* Dom' S. vulgariter dictus, &c. est, & per aliquot Annos jam *aqua cursum.* ult' elaps. fuit valde ruinosus & in maximo decalu pro defectu reparationis, adeo ut Subditi Dom' Regis, in, supra, trans, vel ultra dictum pontem per se vel cum eorum equis, vel carriagiis, transire, redire, & ire, sine magno discrimine non possunt nec audent ad commune nocementum omnium dicti Dom' Regis Subditorum, quorum interest ratione negotiorum suorum ibidem transire, & ulterius fur' predict' presentant quod propterea politica eundem pontem aut aliquam inde parcellam ex jure aut ex antiqua consuetudine reparare debeant aut consueverunt.

If it is known who ought to repair *ratione tenure*, then the Indictment must be thus, viz. After the Recital that it is in Decay.

* If the Inhabitants of a particular Place ought to repair, then say, *Et quod Inhabitantes de, &c. pro tempore existentes debent reparare, sustentare & manutenere prædict' pontem, & quilibet eorum pro sua parte reparare debet, &c.*

* *Et quod R. B. ratione tenure, seu manerii sui de A. cum pertinent' in Com' S. prædict' pontem illum reparare & emendare debet; & quod idem R. B. ac omnes alii quorum statum prædict' R. B. habet in eodem manerio de, &c. pontem illum reparare & emendare debent & consueverunt de tempore cuius contrarii memoria hominum non existit toties quoties necesse fuit, &c.* Godb. 346; 347.

'Tis not always necessary, to set forth *ad commune nocumentum*, for if it is that *ligei Dom' Regis* cannot pass *ad nocumentum eorum*, the Word *Ligei* takes in all the King's Subjects, and then *ad nocumentum eorum* amounts to as much as *ad commune nocumentum*. 2 Leon. 183.

Two were indicted for not repairing a Bridge, but the Indictment was quash'd, because it was not alledged that the Bridge was over the Water, or that it was ruinous and decay'd, or that the Defendants *debent & solent reparare ratione tenura*; for a Prescription against a Common Person to repair a Bridge, cannot be, unless 'tis *ratione tenura*. Gold. 346.

So an Indictment for pulling down a Bridge *in via regia* was held good, tho' it did not shew that it was a common Bridge. 4 Leon. 40.

Suffex, ff. Ad Generalem Quarterial' Session' Pacis, &c. Domini Regis tent', &c.

WHereas the Inhabitants of H. in this County, were formerly indicted for not repairing of a Bridge called, &c. now in Decay; And whereas at the Midsummer Sessions held for this County, in the Year, &c. upon Trial of the Traverse join'd, the County having Notice, it was then and there found that the said Inhabitants ought not to repair the said Bridge. And whereas the Jury, &c. having presented, that 'tis not known what Hundred, Lands or Tenements, Town or Parish, or what Person certain, or Body Politick, ought of Right to repair the same; Therefore, according to the Form of the Statute in that Case made and provided, it is now order'd by this Court, That the said Bridge shall be made and repair'd by the Inhabitants of, &c. within which the said Bridge standeth; and that the Justices of Peace of that Division would take Care for the raising Money for and towards the Repair of the said Bridge.

The Justices Warrant to the Constable, &c. to make a Tax for a County-Bridge.

To the High Constables of the Hundred, of, &c. and to R. P. and R. B. of, &c. Inhabitants of the said Hundred, and to every of them.

Suffex, ff. **W** Hereas the Bridge called, &c. within the said County, was lately in Decay, and unrepaired; and by an Order made at the Sessions, &c. in the County aforesaid, the said Decays and Reparations were ordered to be amended at the Charge of the County, and have been amended accordingly; the proportionable Part of which Charge thought fit to be imposed upon the Division of, &c. doth amount to, &c. and the proportionable Part of the same thought fit likewise to be imposed upon the Rape of, &c. doth amount to, &c. of like lawful Money: These are therefore in his Majesty's Name, to command you the said Constable and Inhabitants aforesaid, that you, or any three of you, whereof the said Constable to be one, do forthwith, after Notice given, make a Taxation on all and every the Inhabitants of the said Hundred, for the Raising the said Sum of, &c. so imposed on the said Hundred, and that you do bring the said Tax fairly written and subscribed by you, or by any three of you, whereof the said Constable to be one, unto us, at the House of, &c. on Monday, &c. to the End we may farther proceed therein, as to Justice doth belong. Given under our Hands and Seals, &c.

Four Justices, Quorum unus.

A Warrant to collect the Tax.

To J. O. and T. B. Inhabitants of the Hundred of L. in the said County, &c.

Suffex, ff. **T** Hese are to require you, that you forthwith collect the several Sums of Money mentioned in the Taxation, herewith delivered unto you, on the several Persons mentioned, and that you pay the same unto R. N. of, &c. whom we have appointed General Receiver of the said Money so to be raised for the Purpose aforesaid, deducting out of the same only 30 s. by us allowed unto you, for and towards your Care and Pains in collecting and paying the same. And in Case of Refusal or Neglect of Payment by any of the said Parties, of the particular Sums on them respectively taxed, after Demand thereof, that then you certify unto us the Name or Names of the Person or Persons so refusing, with all convenient Speed. Given under our Hands, &c.

A War-

A Warrant, for Non-payment, to levy the Sum by Distress.

To the Constables, &c.

Four Justices.

Suffex, ff. **W**Hereas Complaint hath been made unto us, by, &c. who were duly appointed, to collect the Money imposed upon the Hundred of, &c. for and towards the Repairing the Bridge of, &c. in the said County, that the several Persons whose Names are under-written, have refus'd to pay the respective Sums to which they were severally taxed for the Purpose aforesaid, although the same had been duly demanded of them respectively: These are therefore to require you, to cause the said Persons to come before us to answer the Premises; which if they refuse to do, that then you levy the several Sums aforesaid, by Distress and Sale of the several Goods of the said Offenders; and in Default of such Distress, that you certify us thereof. Given under our Hands and Seals, &c.

But the safest Way for the Justices, is to do all Things which relate to Bridges in the open Sessions; and the Precedents above-written are when the Statute is pursued; for tho' it is not expressly directed by the Statute, that the Proceedings shall be in the Sessions, where it is not known who shall repair, as it is where the Person is known, yet my Lord Coke's Advice is to proceed there.

The Purport of the Statute, where 'tis known who shall repair, is, viz.

1. Four Justices, *Quorum unus*, may call before them the Constables of every Parish, or two Inhabitants thereof.
2. They may, with their Assent, tax every Inhabitant.
3. After the Tax made, they must write the Name of every Man tax'd in two Rolls indented.
4. They must appoint two Collectors for every Hundred, and give them one Part of the Roll under the Hands and Seals of the Justices.
5. By Virtue thereof the Collectors may distrain.
6. Justices may appoint two Surveyors to view the Repairs, and cause the Decays to be amended.
7. Both Collectors and Surveyors must account to the Justices, who may send Process against them returnable in Sessions, and commit them.

Buggery.

Buggery.

THIS is an Offence against the Order of Nature committed by Mankind with Mankind or Beasts, or by Women with Beasts.

The Words of the Statute which makes this Offence Felony, ^{25 H. 8.}
(viz.) If any Person shall commit the detestable Sin of Buggery ^{c. 6.}
with Mankind or Beast, &c. which Word, Person, extends as
well to a Woman, as to a Man; and, as my Lord Coke tells us, ^{3 Inst. 59.}
that Word might be used by the Law-makers; because a little
before that Act was made, a great Lady had committed Bug-
gery with a Baboon, and conceived by it.

There must be *penetratio & emissio Seminis*; for the one with-
out the other will not make the Sin; and therefore the Indi-
ctment must be, *Quod carnaliter cognovit, &c.* What
makes the
Offence.

In my Lord Audley's Case, which happened Anno 6 Car. 1.
and who was tried by his Peers; the Fact was *Pollution and using
a Man upon his Belly Sodomitically*, without Penetration; and
the Lords demanded of the Judges, whether this was Buggery
by the Statute 25 H. 8. The Lord Chief Justice Hide told them
it was; but Richardson, the Chief Justice of the Common Pleas,
was of another Opinion: And this might create different Op-
inions amongst the Peers of that Trial, who were 27 in Num-
ber, whereof 12 acquitted him of the Buggery, and 15 found
him Guilty.

It was anciently punish'd by Death: But the old Writers The Pun-
ishment.
differ in the Manner; for some say, the Offender must be
burnt; others, that he shall be buried alive; and some say, the
Man was to be hanged, and the Woman drowned: but now by
the Statute of the 25 H. 8. cap. 6. 'tis made Felony without
Benefit of Clergy.

'Tis true, this Statute was repealed by 1 Mar. but it is re-
vived by 5 Eliz. cap. 17.

Agens & consentiens pari pœna plestantur, viz. by hanging till
they are dead, unless the Party consenting is within the Age
of Discretion, and then it is not Felony.

And this may be the Reason why the Age of the Party is
expressed in the Indictment, tho' I find it omitted in my Lord Hutt. 115.
Audley's Case for this very Offence; and probably his Indi-
ctment was drawn by that of Mr Stafford, herein after mention-
ed, for they vary only in this Particular, and the Word *mo-*
tus is left out of one, but it is *motus & seductus* in the other.

In Easter Term, 5 Jac. one Mr. Stafford was indicted, and
found guilty of this Offence, for which he was executed; and
because my Lord Coke tells us, that the Indictment was drawn ^{3 Inst. 55.}
with great Advice, I have thought fit to copy it here *verbatim*.

Middl'

Co. Entr.
352.
Form of
the Indict.
ment.

Middl' ss. **J**UR', &c. quod H. S. nuper de London, Armiger, Deum pre oculis suis non habens nec Nature ordinem respiciens, sed instigatione diabolica motus & seduct' duodecimo die Maii, &c. apud paroch' St. Andreæ in High Holborn, in Com' Middl' pzed' viz. in Domo Mansionali cujusdam M. ibidem vi & armis in quendam R. B. puerum masculum circa etatem serdecim Annozum insultum fecit & cum eodem R. B. adtunc & ibidem nequiter diabolice felonice ac contra nature ordinem rem veneream hubuit ipsumque R. adtunc & ibidem carnaliter cognovit peccatumq; illud Sodomiticum detestabile & abominandum, Anglice vocat' Buggery (inter Christianos non nominand') adtunc & ibidem cum eodem R. B. nequiter diabolice felonice ac contra naturam commisit & perpetrabit in magni Dei omnipotentis displicentiam ac totius generis humani dedecus ac contra pacem dicti Domini Regis coronam & dignitatem suas, & contra formam Statuti in hujusmodi casu edit' & prohib. &c.

Burglary.

Moor 660. **I**S a Breaking and Entering of a Mansion-house in the Night-time, with an Intent to commit Felony, whether such Felonious Intent be executed or not.

But an Infant under 14, a natural Fool, or a very poor Person, who shall enter a House, being compelled by Hunger, are not Burglars.

Upon this Definition, these Things may be observ'd:

1. What is a Breaking, &c. and where a Burglary may be committed without an actual Breaking.
 2. What is an Entry, and where Burglary may be done without an actual Entry by the Person himself.
 3. What shall be esteemed a Mansion-house, and what Places make the Offence Burglary, and what not.
 4. The Intention of the Person is to be considered.
 5. Clergy, &c.
1. As to the First, The Entering of an House with the Doors open, is a Breaking in Law; yet 'tis not Burglary, unless the Door,

Door, Window, or Wall be broken, or the Latch drawn, or the Door unlock'd.

If a Man comes into an House, and enters into a Chamber, and there breaks open a Trunk, and steals Money or other Goods; this is no Burglary, because the Trunk was no Part of the Dwelling-house: But in such Case, if he breaks open the Chamber-Door, or any Door of a Cupboard, which is fixed to the Freehold, this is an actual Breaking the House. *Kelynge* 58, 59.

2. But Burglary may be committed without an actual Breaking, as by those who watch to prevent a Discovery, whilst their Companions break the House.

By coming down a Chimney.

By entring with the Help of a Key.

By entring, the Door being open, and the Owner of the House retiring to a Chamber, which the Offender breaks open.

By breaking Glafs in a Window, and hooking out Goods. *Anderson* 114. *Moor* 668. *Poph.* 42.

By pretending themselves to be robbed, and raising Hue H. P. C. 81. and Cry, and with a Constable, demanding Entry, the Owner opens his Doors, then they bind the Constable, and rob the House; for this is *in fraudem Legis*.

By the Help of a Servant within opening the Door or Window, and the Thief entring, 'tis Burglary in him, and Robbery in the Servant.

The Master lies in one Part of the House, and the Servant *HUM.* 20. in another Part, who in the Night draws a Latch, and enters the Chamber of his Master, with an Intent to murder him, 'tis Burglary.

Anno 17 *Car.* 2. one *Far*, a Solicitor, had obtain'd Judgment *2 Sid.* 254. against the casual Ejector, and the Sheriff deliver'd Possession of the House, which he enter'd, and sent the Defendant to *Newgate* for want of Bail, and carried away Goods to a considerable Value; but having no Colour of any Title to the House, he was found guilty of Felony; and though a Solicitor, he could not read, and was hang'd.

By putting the Hand or a Hook in the Window, and taking out Goods.

By turning the Key, when the Door is lock'd on the Inside.

3. The Church is a Mansion-house, within the Meaning of the Law. *3. What is a Mansion-house.*

And therefore an Indictment against the Offender, for that he *Burglariter fregit* (without saying *intravit*) *Ecclesiam in nocte ad spoliand' & depredand' bona parochianorum in eadem existen'* but took nothing, this was held good. *Dyer* 99.

Where a Man hath two Dwelling-houses, and dwells in each by Turns, and one is broken, though no Person in it, it is Burglary.

A Man had a Lease of a Shop, which was in the Dwelling-House *Hutt.* 33. of another, and the Lessee worked there in the Day-time,

Burglary.

time, but lay in another House, the Shop was broke open in the Night, and the Goods stoln; this is not Burglary, because it was not a Mansion or Dwelling-House, for it was severed from the House by the Lease.

A Chamber in a College, or Inn of Court, though no Body therein; or the Chamber of a Guest, broken by the Inn-keeper, with an Intent to rob.

Now the Reason why 'tis Burglary to break open a Chamber in the Inns of Court, is, because every Gentleman hath a several Property in his Chamber; But *Somerset-House* or *Whitehall* are *Domus Mansionales* of the King; and if a Chamber is broke open there, it must be so alledged in the Indictment, and not *Domus Mansionalis* of the Person who lodged in it. *Kelynge* 27.

A Barn or Stable, contiguous to a Dwelling-House: But a Shop distinct from the House, is not

Nor a Booth; but yet by a particular Statute, 'tis made Burglary to break it open.

And by a late Statute to break open a Shop, or Ware-House belonging or used with the Dwelling-House, in the Day-time, and taking Money or Goods to the Value of 5 s. though no Person is therein, is Burglary: Which see *Postea*.

4. The Intent.

And this must be to commit Felony; if it be to do a Trespass, 'tis not Burglary for breaking and entring: But going away may be Felony, but 'tis not Burglary.

If Thieves in the Night come to a Dwelling-House, and a Person within opens the Door to resist them, and one of the Rogues shoots into the House, the Door being open, and missing the Person, breaks the Wall on the other Side with the Bullet; this is not Burglary, because the Breaking the Wall with the Bullet was not a Breaking the House with Intent to commit Felony. *Savile* 59.

But yet, where one intended to murder, and for that Purpose broke a Hole in the Wall in the Night, and perceiving where the Person was, shot at him thro' the Hole, but missed him; this was held Burglary 1 *And.* 114, 115.

* *Domum Mansionalem*; for these Words make it

And so are all the late Authorities, &c. That breaking a Dwelling-House in the Night-time, with an Intent to kill or rob, though there is not any Person in the House, yet 'tis Burglary. *Moor* 660. *Poph.* 52.

Burglary, tho' 'tis not set forth that somebody was in the House, and put in Fear.

'Tis true, all the ancient Precedents were only that the Criminal *noctanter & felonice* * *fregit*; but in the later Indictments 'tis usually inserted that some Body is in the House, and put in Fear; because by the Statute of 23 H. 8. Clergy is taken away from those who rob a House, the Owner or Dweller, his Wife, Children or Servants, then being within, and put in Fear. *Moor* 660, 661. *Poph.* 43.

1 *And.* 303, 661. *Poph.* 43.

Entring in the Day-time, and lying privately till Night, then robs and departs, 'tis not Burglary; but if he breaks open any Door to get out, 'tis Burglary.

5. Clergy.

5. If

5. If an House was broke open, with an Intent to commit Felony, and no Body therein, in former Times the Offender had his Clergy; but if the Dweller had been within, and put in Fear, then by the Statute of 23 H. 8. cap. 1. Clergy was taken away, for this was esteemed an Aggravation of the Offence; and therefore the Precedents in those Days were, *viz. Quod Domum Mansionalem noctanter Felonice & Burglariter fregit & intravit*, some Person being therein, &c.

Afterwards, 18 Eliz. cap. 6. Clergy was taken away in all Cases of Burglary; and Anno 39 Eliz. a Law was made, That if a House was broke open in the Day-time, and Money and Goods to the Value of 5 s. taken away out of the House, or Out-House thereunto belonging, tho' no Person therein, yet 'tis Felony without Benefit of Clergy.

But because Goods were often stoln in a Dwelling-House without any actual Breaking, a Law was made, That if any Person feloniously take away Goods, being in a Dwelling-House, the Owner, or other Person being therein, and put in Fear; or shall rob any Dwelling-House in the Day-time, any Person being therein; or shall be Accessary to the same; or shall break any Dwelling-House, Shop, or Ware-house thereunto belonging, in the Day-time, and feloniously take away Goods to the Value of 5 s. tho' no Person therein; or shall counsel, hire, or command another to commit Burglary, shall not have Clergy. 3 & 4 Wil.

He who apprehends and prosecutes a House-breaker to Conviction, shall within a Month afterwards receive of the Sheriff of the County, &c. 40 l. upon producing the Certificate of the Judge, or Justices, before whom the Person was convicted. 5 Anna. cap. 32.

The Reward of 40 l. for apprehending and convicting any Person or Persons for Burglary, shall be paid without any Deduction or Fee, for every Offender who shall be apprehended and convicted for the said Crime, other than 5 s. for drawing and writing the Certificate. 7 G. c. 23.

If any Person enter into the Mansion or Dwelling-House of another, either by Day or by Night, without breaking the same, with an Intent to commit Felony, or being in the House commit any Felonies, and in the Night-time breaks the House to get out, he is guilty of Burglary, and hath not Clergy. 12 A. c. 7.

Any Person feloniously stealing Money or Goods to the Value of 40 s. or more, being in the Dwelling-House or Out-House thereunto belonging, tho' the same was not actually broken open; and tho' any Person be or be not in such Dwelling-House or Out-House, and the Aider and Assister therein, shall be guilty of Burglary, and lose the Benefit of Clergy.

If two are indicted for Burglary, and one is found guilty of Felony, and the other of Burglary; 'tis a good Verdict as to the Felony, because the Jury might have found both guilty of Felony; Sid. 171.

Felony; but they cannot find one guilty of Burglary, and the other of Felony, upon the same Indictment and Evidence.

This was the Case of a Father and his Son; the Father, being found guilty of Felony, was discharged.

If two are indicted for the same Burglary, and one convicted, and the other acquitted, he who was acquitted shall never again be tried for the Fact; but if he took any Goods out of the House, which were not mentioned in the Indictment, as Money of any Servant, &c. he may be indicted for that Felony, because the Facts are several Felonies. *Kelynge* 30.

The Indictment.

Suffex, ff. **J**UR', &c. quod T. P. de H. in Com' pzed' Labourer, quarto die Maii, Anno Regni, &c. vii & armis Domum Mansionalem R. B. apud B.

in Com' pzed' Ar' * noctanter, viz. inter horas decimam & undecimam post meridiem ejusdem diei quodam R. N. tunc in eadem domo in pace Dei & dicti Dom' Reg' existent' felonice & † Burglariter fregit & intrabit & decem libras legalis monete in pecuniis numeratis de bonis & catallis pzed' R. B. in dicta domo adtunc & ibidem existent' inbent' adtunc & ibidem felonice & Burglariter furat' fuit cepit & asportabit contra pacem dicti Dom' Reg. Cozonam & Dignitatem suas.

* It must be *Noctanter*, for otherwise 'tis but Felony.

Cr. El. 583. *Savile* 47.

† And not

Buglariter

Cr. El. 900.

Accessory before the Fact.

Et quod quidam R. H. de L. in Com' pzed' Yeoman, ante feloniam & burglar' pzed' per ipsum T. P. in forma pzed' perpetrat' viz. sexto die Aprilis, Anno, &c. eundem T. P. apud B. pzed' ad feloniam & burglar' pzed' in forma pzed' faciend' abettabit procurabit & excitabit contra pacem, &c.

Accessory after the Fact.

Et quod quidam J. O. de H. pzed' in Com' pzed' Labourer, sciens pzedat' T. P. feloniam pzed' in forma pzed' fecisse & perpetrasse eundem T. P. dicto quinto die Maii, Anno, &c. post feloniam pzed' per ipsum T. P. sic factam & perpetratam apud L. pzed' in Com' pzed' felonice & voluntarie recepit comfoztabit & hospitatus est contra pacem, &c.

If any Person commits Burglary, House-breaking, Felony, in Stealing Horses, Money, Wares, or Goods from whom the Benefit of Clergy is taken away by the Act of 11 *Will.* and being out of Prison, shall discover two more Offenders and convict them, he shall have a Pardon, which shall be a good Bar to an Appeal. 11 *Will. cap.* 23.

Burials.

Burials. See Wool.

Adjudged that in Strictness no Funeral Expences are to be allowed against Creditors, but only for the Coffin, ringing the Bell, the Parson's, Clerk's, and Bearers Fees, where they are due, but not for the Pall or other Ornaments. 1 Salk. 296.

Upon a Motion for a Prohibition to the Spiritual Court, to stay Proceedings for a Customary Fee of Ten Pounds, pretended to be due to the Dean and Chapter of Exeter, for burying in the Cathedral Church. 1 Salk. 334.

Adjudged that at Common Law Burials ought to be in the Church-yard, and no Fee is due, 'tis true when Leave is required to bury a Man in the Church; the Parson may insist on his own Price, and if there is a Custom to pay what he Demands, and the Custom is denied, 'tis triable at Law, and a Prohibition shall go *non propter defectum jurisdictionis sed triationis*.

Burning of Houses.

TIS Felony at Common Law, maliciously and voluntarily to burn the House of another.

Whether, { 1. There must be an actual Burning, and what that is.
2. It must be maliciously and voluntarily.
3. It must be the House of another.

1. 'Tis not necessary that the whole House should be burnt, for 'tis Felony to set on Fire and burn Part of it.

2. It must be done maliciously and voluntarily, and so is the Indictment, *Quod voluntarie & ex malitia sua præcogitata, &c.* for if 'tis done by Mischance or by Negligence, 'tis not Felony.

Sometimes the Law implies Malice, as if the Offender intends to burn the House of A. only, and by this Means the House of B. is set on Fire, this is Felony, for the Event shall be coupled to the Cause which was malicious.

3. The House of another. Formerly it was Felony to burn the Frame of an House, or the bare Attempting to set on Fire a Stack of Corn; and 'tis * still Felony to set on Fire a Stack of Corn in Northumberland, Cumberland, Westmorland, or Durham. * 43 Eliz. cap. 31.

And even now, 'tis Felony in the Night-time to burn Barns, Stables, Ricks of Corn, Hay, &c. or any of the Out-houses, which are contiguous to the Dwelling-House, and the Offender is not to have Clergy. 22 & 23 Car. 2. cap. 7.

Burning of Houses.

But if a Barn stand remote, and is not the Parcel of the Mansion-House, then 'tis not Felony, unless it hath Hay, or Corn in it.

Cro. Car.
376.
Holme's
Case.
Jones 351.

He who is in Possession of a House by Lease, sets it on Fire, with an Intention to burn his Neighbour's House; this was held to be no Felony, by the Opinion of three Judges, because the Offender being in Possession, it cannot be said to be done *vi & armis*; but Justice Crook was of a contrary Opinion, because the Offence falls under the Definition of Felony, which is a Capital Crime, committed *felleo animo*; and here the Fact (tho' in his own House) was done maliciously, and so found by the Jury, and the Intention shall be coupled to it, which was *Nequiter factum & mala Conscientia*.

A Captain, Master or Mariner, or other Officer belonging to a Ship, and burning or destroying it, or procuring the same to be done, to the Prejudice of the Owner or Merchant, must suffer Death as a Felon; and if committed where the Admiralty has Jurisdiction, it shall be tried by Vertue of a Commission under the Great Seal, in such Places in the Realm as shall be therein limited; and such Offender standing mute, or challenging above the Number of twenty Persons, shall suffer Death without Benefit of Clergy.

Indictment.

Suffex, ss. **J**UR', &c. quod J. O. nuper de H. in Com' pzed' Labourer secundo die Decembris, Anno, &c. ad * Domum Mansionalem R. B. de H. pzed' in Com' pzed' Gen' (eadem Domo in dicto Com' erissen.) vi & armis inter horas quintam & sextam ante meridiem ejusdem diei accessit & cum candela ignita que dict' J. O. adtunc & ibidem in manu sua tenuit (or as the Case is) pzed' domum ex malitia sua pzeogitata felonice accendit, unde eadem domus tunc & ibidem totaliter combusta fuit & sic pzed' J. O. pzedicto secundo die Decemb. Anno supradicto apud H. pzed' in Com' pzed' Domum Mansionalem pzed' modo & forma supradict' voluntarie & ex malitia sua pzeogit' felonice incendit & combustit contra pacem, &c.

* It need not be Mansionalem, but Domum only, which comprehends a Barn, Stable, &c.
3 Inst. 67.

For burning a Barn with Corn in it.

Suffex, ss. **J**UR', &c. quod J. O. nuper de H. in Com' pzed' Labourer, secundo die Decemb. Anno, &c. apud L. in Com' pzed' vi & armis hozreum R. B. apud H. pzed' in Com' pzed' erissen' felonice fregit & intravit & adtunc & ibidem ex malitia sua pzeogitata & ex instigatione diabolica in hozreum pzed' cum diversis granis & garbis adtunc impletum ignem accensum adtunc & ibidem voluntarie & felonice imposuit & cum eodem igne adtunc & ibidem hozreum pzed' cum omnibus granis & garbis supradict', in eodem hozreo adtunc erissen' voluntarie & felonice combustit & totaliter cum igne illo felonice & voluntarie consumpsit contra pacem, &c.

Butchers,

Butchers.

BUtchers may be guilty of Offences against the Law,

1. In buying
 2. In killing
 3. In selling
- } Cattle.

1. By 3 & 4 Ed. 6. c. 19. Buying of fat Cattle, and selling them alive, he forfeits them.

In *London* or *Westminster*, or within ten Miles, buying fat Cattle, and selling them alive or dead to another Butcher, the Seller forfeits the Value, by the Statute 22 & 23 Car. 2. cap. 10.

2 Killing of Calves to sell under five Weeks old, loseth 6 s. 8 d. or Bullock, Steer or Heifer, under two Years.

Killing in his Scalding-house, or within the Walls of *London*, forfeits 12 d. for every Ox, and 8 d. for every other Beast.

4 Hen. 7. cap. 3.

3. Selling Swines Flesh measles, or dying with the Murrain, 15 Car. 2. shall be amerced for the first Offence, Pillory for the second, c. 8. 22 & fined for the third, and abjure the Town for the fourth Offence. 23 Car. 2. cap. 20.

Selling of fat Oxen, Steers, Runts, Kine, Heifers, Calves, Sheep or Lambs, alive, forfeits double the Value; one Moiety to the King, the other to the Informer. Continued 1 Jac. 2. cap. 19.

Selling at unreasonable Rates, and not for moderate Value, loseth double the Value.

Conspiring not to sell but at Prices agreed on; the first Offence 10 l. to the King; and if not paid within six Days after Conviction, must have twenty Days Imprisonment; second Offence 20 l. and if not paid, then in the Pillory; the third Offence 40 l. and if not paid, &c. lose one Ear. 2 Ed. 6. cap. 15.

Butcher using the Mystery of a Tanner, forfeits 6 s. 8 d. per Day, during the Time he useth both Professions; one Part to the King, another to the Prosecutor, and another to the City, Corporation, or Lord of the Liberty. 1 Jac. 1. cap. 22.

The aforesaid Act, 23 Car. 2. was continued by the Statute 5 Anne, from and after the 25th of March 1707, for 7 Years.

By which Act 'tis provided, That no Butcher, either by himself, his Servant or Agent, shall sell any fat Cattle, alive or dead, to another Butcher in *London* or *Westminster*, or within ten Miles thereof; if he doth, he forfeits the Value of the Cattle so sold, or offered to Sale; one Moiety to the Queen, the other to him who shall sue for the same; and if he recover, he shall have full Costs.

An Indictment for selling of unwholesome Flesh.

Suffex, ss. **J**URAT, &c. quod T. T. de L. in Com' pzed, Marcel-
larius secundo die Decembris, Anno, &c. apud L.
K 3 pzed.

Butter and Cheese.

pred' in Com' pred' carnes insalubres, viz. putrid' corrupt' & ventilat' fraudulenter subdole & deceptibe venditioni exposuit in malum exemplum & magnum periculum subditozum Dom' Reg' nunc & contra pacem, &c.

Butter and Cheese.

Buying.

THE Statutes which concern this Matter, are,

By 3 & 4 Ed. 6. cap. 21. None, except Inn-holders or Victuallers, shall buy Butter or Cheese to sell again, except by Retail in open Shop, Fair, or Market, and not above a Wey of Cheese, or Barrel of Butter, at one Time, in Pain to forfeit double the Value.

What is to be done in $\left. \begin{array}{l} \text{Buying} \\ \text{Packing} \\ \text{Selling} \end{array} \right\}$ Butter.

Selling.

By 4 & 5 W. & M. cap. 7. The Buyer having approved the Butter, the Seller shall not afterwards be liable to any Penalties in the Act 14 Car. 2. and the Buyer must then set his Mark or Name at Length on the Cask; afterwards, if the Seller shall open or exchange the Cask, or if he pack bad Butter, or mix Bad with Good, or do any Fraud, and is convicted before the Justice, forfeits 20s. for every Firkin, to be levied by Warrant of a Justice.

Packing.

Old Butter shall not be packed with new, nor Whey-butter with that made of Cream, nor salted with great Salt, nor with more than will preserve it; the Forfeiture is double the Value of Butter false packed, and six Times the Value of every Pound wanting.

None shall repack Butter for Sale, on Pain to forfeit double the Value.

It must be packed in Casks of dry and sound Timber, marked with the Weight of the empty Cask, and with the first Letter of the Christian and Surname of the Packer at Length, with an Iron, on Pain to forfeit 10s. for every Hundred Weight of Butter.

13 & 14
Car. 2.
cap. 26.

He must deliver in every Kilderkin 112 Pounds, and in every Firkin 56 Pounds, and in every Pöt 14 Pounds, besides the Casks and Pots.

The said Offences to be determined by the Justices in their Sessions, or in any Court of Record, in the Place where committed, by Action of Debt, Information, Indictment, or Presentment; one Moiety to the Poor of the Parish where the Offence is committed, the other to the Informer, and double Costs, so as such Suit, &c. be within four Months after Sale of such Butter.

By the said Statute of 3 & 4 Ed. 6. Justices in Sessions may restrain the Retailing of Butter and Cheese.

A War-

A Warrant to distrain for the Twenty Shillings Forfeiture.

To the Constable, &c.

Suffex, ff. **W**Hereas T. P. of H. in the County aforesaid, Cheese-^s W. & M. monger hath been duly convicted before me upon ^{cap. 7.}

Oath of, &c. That he the said T. P. did mix in a Firkin bad Butter with good, after the same was sold to J. S. of, &c. after the Mark of the said J. S. was set on the said Firkin; by Reason whereof, he hath forfeited the Sum of 20 s. to be equally divided between the Poor of the Parish of A. where the said Offence was committed, and the Informer, according to the Statute in that Case made and provided: These are therefore in His Majesty's Name, to command you to levy the said Sum of 20 s. so forfeited as aforesaid, by Distress and Sale of the Goods of the said T. P. restoring to him the Overplus, if any such shall happen to be, after your Charges for taking the said Distress shall be deducted. Given, &c.

Warehouse-keepers, Weigher, Searcher or Shipper of Butter, must receive it, and take Care of it till it is shipped, and must ship it on the next Vessel, which shall come to carry it to London (except the Owner of the Butter order the contrary) and shall receive of the Owner 2 s. and 6 d. for every Load, and no more, and so proportionably; and if they or Servants shall refuse to receive, &c. or take Care of the Goods, or to ship them, being convicted before a Justice by Oath of one Witness, &c. shall forfeit for every Firkin 10 s. and for every Wey of Cheese, 5 s. to be levied as aforesaid.

Warehouse-keepers, &c. shall enter into Books, the Time when Butter is received, the Quantity and Owner's Name, and when shipped, the Master's and the Vessel's Name, and to whom consign'd, and the Book shall be open for any one to view. Warehouse-keeper neglecting any of these Matters, being convict as aforesaid, forfeits for every one of the said Offences 2 s. and 6 d. to be levied as aforesaid; and if no Distress, the Justice may commit the Offender till the Penalty is satisfied.

Masters of Vessels refusing to take in Butter, &c. before the Vessel is laden, shall forfeit, being convict, for every Firkin so refused, 5 s. and for every Wey of Cheese 2 s. and 6 d. to be levied as aforesaid; one Half of all the Forfeitures to the Poor, and the other to the Informer.

This Act excludes not Cheesemongers free of London to send their own Vessels, or such as they shall hire, for their own Goods; neither doth it extend to the Counties of Lancaster and Chester, nor to the County of the City of Chester.

Buttons and Button-holes.

Persons may appeal from the Justices to the next Sessions, whose Determination shall be final: But the Appellant must first enter into a Bond of 20 *l.* Penalty to the * Person accused with one or more Sureties, such as the Justice shall approve, to pay Costs, in Case the Appellant is not relieved within a Month after the Appeal determined; the Costs to be allowed by Justices in Sessions.

Buttons and Button-holes.

14 Car. 2. c. 13. **T**HE Importation and Exportation of Buttons made of Hair, Silk or Thread, is prohibited; they who sell or expose such imported Buttons to Sale, forfeit for every Offence 50 *l.*

The Importer forfeits 100 *l.* besides the Buttons, one Moiety to the King, the other to the Informer, who shall sue for it in any Court of Record within a Year after the Discovery of the Offence.

10 W. c. 2. **T**he Justices may issue out Warrants to seize Foreign Buttons. And because many People were maintained by making Buttons with Needles; therefore it was enacted, That no Person shall make, sell or set on Clothes, any Buttons made of Cloth, Serge, Drugget, Frize, Camlet or other Stuffs of which Cloths are usually made, or Buttons made of Wood only, and turn'd in Imitation of other Buttons, upon Forfeiture of 40 *s.* per Dozen, one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, &c.

But this Statute is eluded, by making Buttons of Horn, which are now worn by the Common People.

8 An. c. 6. **A**nd for making the Act of 10 W. 3. more effectual, it is enacted by 8 *Anna*, That none shall make, sell, set on, use or bind, or cause to be made, &c. on any Cloaths or wearing Garments whatsoever, any Buttons or Button-holes made of or used, or bound with Serge, Drugget, Frize, Camlet or any other Stuffs of which Cloaths and wearing Garments are usually made, on Forfeiture of 5 *l.* for every Dozen of such Buttons or Button-holes, one Half to the King, and the other to the Informer; to be recovered either by Action of Debt, &c. or upon Complaint to two Justices, they are to summon and examine Witnesses upon Oath, and * *levy the said Penalty*, returning the Overplus: But Persons aggrieved by the Order of the Justices, may appeal to the next Quarter-Sessions, after Notice given of such order, who are to summon and examine Witnesses on Oath, and to hear and finally determine the Matter of the Appeal, and if Judgment is against the Appellant, shall award the other Party such reasonable Costs and Charges, as to the said Sessions shall seem meet.

* *Note*, The Manner of levying is not directed.

Appeal.

And

And to make the Act 8 *Anna* more effectual, 'tis enacted by the Statute, 4 *G. c. 7.* that after the 25th Day of *March*, 1718. no Buttons or Button-holes made of Cloth, &c. shall be made, or set on wearing Garments, on Forfeiture of 40 s. for every Dozen, and so in Proportion for a less Number, to be distributed after the Charges of Conviction deducted; one Moiety to the Informer, the other to the Poor of the Place; and if not paid upon Demand within fourteen Days after Conviction, then the Justice may issue his Warrant to levy it by Distress, and for Want of a Distress, then to commit the Offender to Gaol, there to be kept to hard Labour for three Calendar Months.

The Prosecution must be within three Months after the Offence is committed or discovered.

The Conviction must be before any one Justice, not concerned in the Matter of the Complaint, on the Oath of one or more Witnesses.

An Appeal to the Quarter-Sessions is also allowed by the Statute 4 *Geo. c. 7.* whose Determination shall be final, and Costs shall be allowed to the Party grieved.

An Appeal is allowed, as by the Statute 8 *Anna.*

Persons prosecuted may plead the General Issue, and give this Act in Evidence, and if they recover they shall have treble Costs.

All Cloaths or wearing Garments, with Buttons or Button-holes made of the same Cloaths, Serge, &c. and exposed to Sale in any Fair or Market, Shop or Ware-house, or Dwelling-house, shall be forfeited, and applied to the Uses before-mentioned.

Any Taylor or other Person, causing his Servant to make Cloathes contrary to this Act, shall be subject to the like Forfeitures and Penalties. This is a publick Act, and shall be so taken.

A Warrant to seize Foreign Buttons.

Suffex, ff. **W**HERCAS Complaint hath been made unto me, That several Parcels and Quantities of Hair-Buttons, and other Foreign Buttons, have been lately * imported into this Coun- * Bartered, try, contrary to the Laws and Statutes of this Realm: And whereas said or ex- T. P. of, &c. is suspected to have such Buttons so imported in his Pos- changed. session; These are therefore to authorize and require you to enter in- to the Shop, Ware-house or Dwelling-house of the said T. P. the same being open, and to search for and seize all Foreign Buttons whatsoever which you shall there find, imported contrary to the Laws made and provided for prohibiting the Importation thereof. And herereof fail not, &c.

A War-

Buttons and Button-holes.

A Warrant to levy the 5l.

To the Constable, &c.

Middl' ff. **W** Hereas Complaint hath been made unto us R. B. and H. P. two of his Majesty's Justices of the Peace for the said County, that P. P. of, &c. Taylor, did on the 24th Day of July last past, at L. in the said County, set on a wearing Garment a Dozen of * Buttons made of Serge, contrary to the Statute in that Case made and provided. And whereas upon Examination of Witnesses on Oath, and due Proof thereof made, the said P. P. was convicted before us of the said Offence, by Reason whereof he hath forfeited 5l. We do therefore require you or one of you to levy the said Sum of 5l. on the Goods and Chattels of the said P. P. by Distress and Sale thereof, rendring to him the Overplus, if any shall be, and that you pay one Moiety thereof to his Majesty, and the other Moiety to the said R. C. who first informed us of the said Offence. Given, &c.

* Or as the
Case is.

A Warrant to levy 40 s. for every Dozen of Buttons, &c.

To the Constable, &c. of Hamsted, and to the Keeper of the Common Gaol of, &c.

Middl' ff. **W** Hereas Complaint hath been made unto me, that A. B. of H. in the County aforesaid, Taylor, did on the second Day of July last past, at H. in the said County * set on one Dozen of Buttons on a wearing Garment, which Buttons were made and bound with Stuff, contrary to the Law in that Case made and provided: And whereas the said A. B. was duly convicted of the said Offence, on the Day and Year aforesaid, before me who am not concerned in the Matter of the said Complaint, by Reason whereof he hath forfeited 40 s. which he hath neglected or refused to pay unto the Constable of the Parish of H. by the Space of fourteen Days next after such Conviction as aforesaid, the same being lawfully demanded of him: These are therefore to require you to levy the said Sum of * 40 s. on the Goods and Chattels of the said A. B. by Distress and Sale thereof, rendring to him the Overplus, and if no sufficient Distress can be found, that then you convey the said A. B. to the common Gaol, in, &c. and deliver him to the Keeper thereof, who is hereby commanded to receive him, and to keep him to hard Labour for the Space of three Calendar Months. Given, &c.

• Make,
sell or set
on, or cause
to be made,
&c.
4 G. c. 7.

• A Moiety
to the In-
former, the
other to the
Poor.

Cards and Dice. See Game.

Cattle. See Pasture.

Buying of Cattle must be in open Fair or Market; and they must not be sold again in the same Fair or Market; the Forfeiture is double the Value. 3 & 4 Ed. 5. cap. 19.

Buying and Selling alive, within five Weeks afterwards, the Forfeiture is double the Value; he must keep them for that Time in some Pasture. *5 & 6 Ed. 6. cap. 14.*

This Offence is to be determined in Quarter-Sessions, by Inquisition, Bill, Presentment, Information, or Testimony of two Witnesses upon Oath: Justices may appoint one Moiety for the King, and award a *Fieri Facias* or *Capias* to the Prosecutor for the Rest.

Offence must be prosecuted within two Years after it is committed.

There was an Action brought in the Sheriffs Court in London upon the Statute before mention'd, and it was held, That it being a Penal Law, the Prosecution should be as directed by the Statute, *viz.* at the Sessions. *Latch. 192.*

An Information upon the Statute 3 & 4 Ed. 6. cap. 19.
for buying Cattle out of a Market.

Suffex ff. **R**. N. Qui tam pro Domino Rege quam pro se ipso in hac parte sequitur, venit hic in Curia in propria persona sua 15 die Januarii, Anno, &c. & tam pro eodem Domino Rege quam pro seipso dat Curie hic intelligi & informari quod J. O. nuper de, &c. 21 die Novemb. Anno, &c. & diversis aliis diebus & vicibus inter predict' 21 diem Novemb. & diem exhibitionis hujus informationis emebat extra feriam vel mercatum videlicet apud A. in Com' predict. de quodam T. P. de, &c. & de diversis aliis personis prefat' R. N. incognitis decem vitulos pretii cuilibet vituli predict' viginti solidorum contra formam Stat' in hujusmodi casu edit' & prohib. unde predict' R. N. qui tam, &c. petit advisamentum Curie in premissis, ac quod predict' J. O. forisfac' viginti libras videlicet duplicem valorem vitulorum predict' sic per ipsum empt' contra formam Statut' predict' & quod idem R. N. qui tam, &c. habere valeat medietatem inde juxta formam Statuti predict', &c.

In

Cattle. Carriers.

In an Information brought for buying Cattle, and selling them again in the same Market, the Judgment must be *quod capiatur*, and not in *Misericordia*, because it is a Contempt, and punishable by Imprisonment. *G. db. 349.*

Information by buying of live Cattle, and selling them again within five Weeks. *5 & 6 Ed. 6. cap. 14.*

Two Wit.
nesses.

Sussex, ff. **R**. N. Qui tam, &c. (as before) quod J. S. nuz per de H. in Com', &c. 28 die Novemb. Anno supradicto & diversis aliis diebus & vicibus inter pzetat' 21 diem Novemb. & diem exhibitionis hujus informationis apud H. pzed' in Com' pzed' emebat de diversis personis pzetat' R. N. qui tam, &c. adhuc ignot' viginti bobes vivos pzetii cuiuslibet bobis pzed' quatuor Librarum ac quod idem J. S. eosdem bobes vivos non custodivit & depastus fuit per spatium quinque septimanarum in suis propriis domibus, terris, firmariis, aut in talibus terris ubi habuit herbagium vel communiam pasture per concessionem sive prescriptionem nec in aliqua earundem, sed pzed' J. S. infra tempus pzed' ult' mentionat' pzed' viginti bobes apud H. pzed' in Com' pzed' vivos rebendit contra formam statuti in hujusmodi casu edit' & probat'. & quod pzed' J. S. forisfact' centum & octaginta libras legalis monete Anglie videlicet duplicem valorem catallorum pzed' sic per ipsum modo & forma pzed' empt' & illicite rebendit' unde idem R. N. qui tam, &c. petit advisamentum Curie in premissis ac debitum legis processum versus pzetat' J. S. in hac parte fieri quodq; ipse idem R. N. qui tam, &c. medietatem forisfact' pzed' habeat juxta formam Statut' pzed', &c.

Carriages. Vid. Soldiers.

Carriers.

3 & 4 W.
& M. c. 12.

THE Justices in *Easter Sessions* every Year, may assess the Price of carrying Goods by Land by any common Carrier, and may certify to the Mayors and Officers of each Market-Town, the Rates, &c. to be hanged up in some publick Place.

Carrier taking above such Rates, forfeits 5*l.* to be levied by Distress by Warrant from two Justices, where the Carrier doth reside, to the Party grieved.

7 & 8 W.
cap. 29.

Carriages on which Goods are carried for Hire, must not be drawn in any common Highway with above eight Horses, or eight Oxen and one Horse, or six Oxen and two Horses, or eight

eight Oxen and four Horses in Pairs: Except Carriages employed in carrying,

Ammunition, { Corn unthrash'd, { Hay, } employed in
 Artillery, { Coals, { Husbandry, } it;
 Materials for { Stones, { Service of } Timber.
 Building, { Straw, { the King, }

The Owner of a Waggon or Carriage forfeits 40 s. Two Thirds to the Use of the Highways, the other to the Informer, to be levied by Distress on any of the Horses; which may be sold after three Days.

A Warrant to levy the Penalty of 40 s.

To the Constable, &c.

Suffex, ff. **W** Hereas T. P. of, &c. in the County aforesaid, Yeoman, hath this present Day made Oath before me J. S. one of his Majesty's Justices of the Peace for this County, That S. A. of, &c. did upon the fifth Day of December last travel with a Waggon, of which he was then the Owner, drawn through the Parish of H. in this County in the common Highway, with nine Horses, contrary to the Statute in that Case made and provided; for which Offence he hath forfeited the Sum of 40 s. These are therefore to require you forthwith to levy the said Sum of 40 s. upon the Goods and Chattels of the said S. A. rendring to him the Overplus, if any shall happen to be, after reasonable Charges deducted for taking the said Distress, and the said Money, when levied, to dispose as followeth, that is to say; Two third Parts thereof to the Surveyors of the Highways within your Parish, to be employed for and towards the Repair of the said Highways; the other Third Part to the said T. P. for discovering of the same.

Indictment against a Carman for stopping of a Way.

Suffex, ff. **J** UR' &c. quod J. A. nuper de, &c. 19 die Novembz, Anno, &c. vi & armis apud Paroch' pzed' in Com' pzed' in communi alta via Regis ibidem vocat', &c. quandam Carucam (Anglice, a Cart) illicite posuit & locabit, & poni & locari causabit, & sic posit' & locat' voluntat' remanere permittit per spatium quatuor horarum apud Paroch' pzed' in Com' pzed' ratione inde communis alta via Regia pzed' per totum tempus pzed' apud Parochiam pzed' in Com' pzed' coarctat' & obstupat' fuit, ita quod Ligee & Subditi dicti Domini Regis per & trans altam & communem viam Regiam pzed' adtunc & ibidem ire transire & redire non potuerunt prout debent & solebant, ad grave & commune nocumentum Subditoz dicti Domini Regis

Certiorari.

Regis per communem altam viam Regiam predictam transeuntium, in malum exemplum aliorum in consimili casu delinquentium, & contra pacem, &c.

Certiorari.

THIS is a Writ directed to the Justices of the Peace, issuing out of the Chancery, and then it is returnable, *in Cancellaria nostra*; or out of the King's Bench, and then it is *nobis mittatis*; or out of the Common Pleas, and then it is *coram Justiciariis nostris de Banco*; and the Justices must make a Return accordingly.

Yelv. 32. It was formerly held, That if delivered after the Return-Day, yet the Justices ought not to proceed, because the Words of the Writ are *coram nobis*, &c. & *non alibi*. And it is still held, That it is a *Supersedeas*, by Reason of those Words, *Non alibi*.

If delivered after the Jury were gone out to consider of their Verdict, it is too late, for it cannot be delivered after the Jury is sworn. P. 9. W.

And yet it will lie after Conviction and before Judgment, but this must be understood where a Writ of Error doth not lie.

Upon a Conviction of the Assizes, if the Judge doubt of the Judgment to be given, he may remove the Record into B. R. by *Certiorari*. Mich. 2. Anna.

A *Certiorari* is seldom granted to remove Indictments found at the Assizes, but it may be granted for some Special Cause.

Style 359. This Writ may be either to remove an Indictment, or the Tenour thereof, or a Recognizance, &c. And it removes the whole Record; and therefore no *alias Certiorari* is to be allowed.

21 Jac. c. 18. But it is not to be allowed, unless the Party indicted will be bound with Sureties (such as the Justices shall approve) to pay the Prosecutor such Costs and Damages as the Justices shall assess within a Month after Conviction.

5 & 6 W. & M. c. 5. And by a later Statute, it is not to be granted in Term-time but upon Motion in Court; and the Party who desires it, must find Bail. (*viz.*)

Two Manuaptors before one or more Justices of the Peace in 20 l. to plead to the Indictment, and at his own Charge to procure the Issue to be joined, and to be tried at the next Assizes in that County where the Indictment was found after the Return of the *Certiorari*, if not in London, Westminster or Middlesex; and if in either of those Places, then the next Term after the

the *Certiorari* granted; and if such * Recognizance is not given * Recognizance and before the *Certiorari* is allowed, they may proceed, though delivered. *Certiorari* must be

If the Party desiring the *Certiorari* be convicted, then B. R. may give Costs; and if not paid within ten Days after Demand, then upon Affidavit made of the Refusal, an Attachment goes, &c. and the Recognizance not to be discharged till Costs paid. *Certiorari* must be certified in B. R. and there filed; and the Name of Prosecutor endorsed.

In Vacation, any Judge of B. R. may grant it. He must endorse his Name, and the Name of the Party desiring it, and before the Allowance the Party must find such Sureties as aforesaid.

And by a subsequent Statute a Recognizance taken before a Judge of B. R. with like Condition, as in the former Act, which the Judge must mention on the Back of the Writ, and subscribe his Name, shall be as good as if taken before a Justice of Peace in the proper County. 8 & 9 W. cap. 33.

When an *Appeal* lies to the Sessions, no Order shall be removed by *Certiorari*, till after the *Appeal* had; if it be, it shall be sent back by *Procedendo*.

The Commissioners who have Power to put the Act 9 Ann. 1 Geo. c. 57. cap. 23. in Execution, may make By-Laws concerning Hackney Coaches and Orders, &c. and no *Certiorari* shall supersede Execution, or any Proceeding upon such Order; but Execution shall be had and made thereon, notwithstanding such Writ.

The Condition of the Recognizance where the *Certiorari* is brought to a Justice of the Peace, and not to a Judge of B. R.

THE Condition of this Recognizance is such, That whereas the above-bounden R. O. hath prosecuted a *Certiorari* returnable, &c. to remove into the King's Bench an Indictment found against him at, &c. for, &c. If therefore the said R. O. shall plead to the said Indictment so removed, as aforesaid, so as Issue may be joined upon the same; and shall likewise at his own Charge, procure the said Issue to be tried at the next Assizes after the Return of the said *Certiorari*, to be held for the County of, &c. where the said Indictment was found; then this Recognizance to be void, &c.

The Return of a *Certiorari* endorsed on the Back of the Writ.

Executio istius Brevis patet in quadam Scheda huius Brevis annex.

The

The Schedule, or Certificate of the Record, in a Piece of Parchment by it self, and filed to the Writ.

E G D R. B. Ir' unus custod' pacis ad pacem Domini Regis in dict' Com' Suffex conserband' nechon ad diversas felonias, transgression' & alia malefacta in eodem Com' perpetrat' audiend' & terminand' assign' virtute istius Brevis mihi deliberat' indictament' illud unde infra sit mentio una cum omnibus illud tangentibus in * Cancellariam dict' Dom' Regis distincte & aperte sub sigillo certifico. In cujus rei testimonium ego p'fat' R. B. his p'presentibus Sigillum meum apposui. Dat', &c. apud, &c.

* Or into the King's Bench, &c.

Where it has been granted. Cinque-Ports. Cro. Car. 252, 264, 332.

It was formerly doubted, whether it would lie to the Cinque-Ports to remove an Indictment for Felony; but since it hath been granted to remove an Indictment out of the Court of Romney, upon a Suggestion, That the Defendant could not have an indifferent Trial before the Steward there, though it was insisted, that they had an ancient Chapter to exempt them from the Jurisdiction of B. R. and from Justices of Oyer and Terminer, and of Assize; but *per Curiam*, a Charter of Exemption from the Oyer and Terminer was never heard of before. *Mich. 8 Will. Rex. vers. Bird.*

Certiorari's have been allowed to remove Indictments for Murder out of a County Palatine; for tho' the King hath granted them *Jura Regalia*, yet he did not thereby intend to exclude himself. *March 165.*

Wales.

It has been granted to remove into B. R. an Indictment of Barretry taken before Justices of Peace in *Wales*, because it was at the King's Suit. *Poph. 144. Latch. 12. 2 Cro. 484.*

But the later Authorities are contrary, for it hath been denied to remove an Indictment of Barretry found before the Justices of Gaol-Delivery, without some special Cause. *P. 6. W.*

It was denied, for removing a Conviction of Recusancy.

Cro. Car. 332.

A Person was indicted at the Grand Sessions in *Anglesea* for *Petit Treason*; and notwithstanding the Statute of 26 H. 8. cap. 6. which allows Indictments in Cases of Felony to be inquired in the Counties adjoining, yet it was doubted whether it should be granted or not, because the Indictment was taken in a *Welsh* County.

1 Vent. 93. 146.

But now this Doubt is resolved; for it hath been granted in Case of Manslaughter and Murder, where the Indictments have been found in *Welsh* Counties.

'Tis true, eight Years after the Statute of 26 H. 8. another 34 H. 8. Act was made, which gave the Justices in *Wales* Power to hold cap. 26. Pleas in the Crown in as large Manner as the Chief Justice of *England* may do: But this is not a Repeal of the former Act; for tho' it gives them Power, &c. it doth not exclude B. R. 1 Mod. 68. without negative Words.

It was awarded to the Mayor and Justices of *Dover*, before Cinque- whom an Indictment of Felony was taken, and not to the Ports. Lord-Warden, &c. because the Justices hold Plea by Virtue of their Commission of Peace, and not by their ancient Charters. *Cro. Car.* 252, 264.

Pending one Indictment for a forcible Entry, another was brought against the same Person for the same Force, &c. The Justices. first Indictment was removed, and the Justices awarded Restitution upon the second; but before it was executed, a *Certiorari* was delivered to one of the Justices to remove the second, who made some Delays till the Party had Restitution; and that Indictment being also removed, the Complainant had Restitution, and the Justice was reproved by the Court, because the Delivery of the Writ is a Prohibition to their Proceedings. *Yelv.* 32.

It may be awarded to remove Orders from an inferior Ju- Orders. risdiction, where the Denying it is not expressly enjoined by some Statute; as in Cases of Bastardy, the Act says, That the two next Justices may take Order, &c. and no *Certiorari* is mentioned; which shews, that the Law-makers intended that such Order might be removed, otherwise they would have enacted that no *Certiorari* shall lie. 3 *Mod.* 95.

It hath been awarded to remove a Presentment in a Leet Leet. upon the Statute of 5 *Eliz.* for using of a Trade not being an Trade. Apprentice; for though the Statute of 31 *Eliz.* saith, That Informations upon Penal Statutes shall be brought in the proper County where the Offence was done; and in a later Paragraph of that Statute, it is enacted, All Suits for unlawful Games, and for not having Bows, &c. shall be prosecuted at the Assizes or Sessions of the County, or at the Leet, &c. and not elsewhere; yet this gives the Leet no new Jurisdiction, but such Offences only are intended, of which they had Cognizance before. *Sid.* 289.

A Fine set by the Sessions upon the Grand-Jury, may be re- Fine. moved.

The Defendant was indicted at the *Old Baily* for a Cheat, 1 *Salk.* 151. in borrowing 600 l. of a Feme Covert, and promising to send her fine Cloath and Gold Dust above that Value for a Pledge, and instead thereof sent her course Cloath and no Gold Dust, and a *Certiorari* was granted, because it was not a criminal Matter; and the Defendant offer'd to try it that Term, which would be a Benefit to the Prosecutor; because by the Course of the *Old Baily* she could not try it so soon.

1 Salk. 149. The Defendant being convicted on an Indictment on the Statute 14 Car. 2. for beating certain Officers, obtained a *Certiorari*, and upon a Motion for a *Procedendo*, it was insisted that a *Certiorari* was not proper after a Conviction, because the Justices who tried the Fact were the most proper to set the Fine: But adjudged that a *Certiorari* lies after Conviction, because in some Cases a Writ of Error will not lie; 'tis true in this Case it will, because the Proceedings are grounded on an Indictment, and therefore the Party may bring a Writ of Error, for which Reason a *Procedendo* was granted.

Where denied. 'Tis not grantable after a Fine estreated in the Exchequer, because it then concerns the King, and cannot be removed without the Consent of the Attorney General. *Hardr.* 409.

Felony. Nor to remove an Indictment of Felony out of an inferior Court, without shewing some special Cause.

Excise. It was denied to remove an Information before the Commissioners of Excise, because the Statute of 12 Car. 2. gives an Appeal to the Sessions, and a Clause that no *Certiorari* shall lie.

Forest. It was denied for removing a Presentment before the Justices in Eyre for cutting of Wood in a Forest, for that would be to take away the Jurisdiction of those Justices who may punish Offences by the Forest-Laws, which are punishable elsewhere; the Party must first be convicted and fined. *Sid.* 296.

Sewers. So it was denied to move a Presentment before Commissioners of Sewers, &c. The Party suggesting, That he ought not to repair the Sewer; because it may be tried before the Commissioners as well as a Nuisance in a Court-Leet; but if the Party will make Oath that a Traverse was denied, then it may be granted.

Privy Sessions. It hath been a Question, If a *Certiorari* be delivered at a Privy Sessions, whether the Justices may not proceed, because the Statute saith, It must be delivered in open Sessions; which must be intended the General Quarter-Sessions.

Constable. It was denied to move an Order of Sessions for electing of a Constable, that the Order might be confirmed by B. R. but the Court made a Rule for a *Mandamus* to swear him. *Style* 127.

London. It was denied to remove an Information exhibited in the Mayor's Court of London, against a Woodmonger, grounded upon an Act of Common Council, unless such Act appear to be against Law. *Style* 211.

London. The Record it self is not removed out of London, but *Tenorem* only; for by Virtue of their Charter, the Record remains there still; and therefore if there should be a Mistake in the Return, it may be amended; but 'tis a Question, Whether this may be done in any other Country? And 'tis for this Reason that no *alias Certiorari* will be granted, because the Record is removed in all other Places by the first Writ. *Sid.* 155, 230.

The

The Indictment was taken *Jan. 25.* and the *Certiorari* was of *Michaelmas* Term preceding; the Record was not removed. *Sid. 317.*

It is always denied to remove Indictments of Forgery or Perjury. *Sid. 54.* because when removed, seldom prosecuted. *Forgery. Perjury.*

The Overseers put a poor Boy to be an Apprentice; the Apprentice Master upon Complaint to the Justices, That he was no Trader, but a Gentleman, had no Relief: Then he moved for a *Certiorari*, but it was denied; because the Overseers, with the Assent of the Justices, have Power to place an Apprentice upon any Person of Ability.

It was denied to remove an Indictment of Barrettry found at *1 Salk. 144.* the Assizes, the Court declaring that it was never granted in such Cases, nor to the *Old Baily* without some special Cause.

Two Justices tendered the Oaths appointed by the Statute, *1 Salk. 145.* *1 Will. cap. 8.* to Dr. Sands, which he refusing, it was certified into the Exchequer according to the Statute *7 & 8 Will. cap. 27.* by the Judge of Assize, and upon a Motion for a *Certiorari* to remove this Conviction of Recusancy, it was denied; because, if granted, it might evade the Statute, for when 'tis in *B. R.* it cannot be sent back again, and the Court cannot proceed against the Party; 'tis true it was granted in the Case of the Duke of York, being presented upon the Statute *3 Fac. 1. cap. 4.* at the Quarter-Sessions for not coming to Church; but that was the only Case.

'Tis never granted to remove Orders of Justices, where an Appeal lies to the Sessions before the Matter is determined upon the Appeal, and 'if an Order should be removed before the Time, then before 'tis filed, the Party may object against the *Certiorari*, and the Order shall be sent down again; but after the Time of Appeal is expired, 'tis too late. *1 Salk. 147.*

Return thereof.

A *Certiorari* was directed to the Commissioners of Sewers, and brought to their Clerk, who refused to allow it out of Court; but the Commissioners ought to make the Return. *Mich. 8 Will. B. R. Style 90. contra.*

The Justices must return it, tho' Bail be not put in according to the Statute. *Sid. 70.*

The Return of a *Certiorari* was in Paper, and for that Reason held not good. *Mich. 4 Will. B. R.*

The Party cannot wave a *Certiorari* when it is once delivered, for then the Court will require a Return thereof. *Hill. Will. B. R.*

Certiorari was granted to remove all Orders against A. and B. and the Order was made against A. alone; adjudged that the Order was not removed. *1 Salk. 151*

1 Salk. 145. *Certiorari* to remove an Order against *W. R.* concerning Foreign Salt, and it appeared by the Order it self, that it was only about Salt without the Word Foreign: adjudged that the Order was not removed.

1 Salk. 147. *Certiorari* to remove an Order, the Return was *cujus quidem tenor sequitur in hac verba*; it was quash'd, because it should be *qui quidem ordo sequitur in hac verba*.

Challenge. See Juries and Misdemeanors.

THE proper Signification of this Word in the Law, is to except against some who are returned of the Jury.
And this Exception or Challenge may be, either

To the Array. }
To the Polls. }

A principal Challenge to the Array may be,

1. In respect of Partiality or Kindred in the Officer who returned the Panel.

The Plaintiff challenged the *Array*, because the Sheriff was *Cousin* to the Defendant, and in shewing how, it appeared that he was *Cousin* to his Wife; but because it did not set forth that he was a-kin to her *tempore panelli arraiati*, it was not quashed, for he might marry her afterwards. *Dyer* 38.

Cro. Eliz.
23.

2. If any Juror is returned at the Desire of the Party.

3. If either Party have an Action of Debt against the Sheriff, but not *e converso*.

Style 233.

In all these Cases, the whole Array must be quashed; but if one Man be sworn, the Array cannot be challenged.

Principal
Challenge
to the
Polls,

1. *Propter honoris respectum*; as if a Peer be returned of the Jury in the Case of a common Person.

If a Peer is Defendant, there must be a Knight of the Jury, or the Array may be challenged; but it hath been a Question, If he is Plaintiff, and will not challenge, for that there is no Knight returned, Whether the Defendant might do it; And it seems he may not. *Dyer* 107. b.

2. *Propter defectum patrie libertatis*, as Aliens; aut *annui census*, as not having 40s. by the Year.

3. *Propter affectum*.

4. *Propter delictum*, as Persons attainted or outlawed.

This Challenge to the Polls is a Challenge to the particular Persons.

And as to the second Cause, viz. *annui census*, it will not be unnecessary to know how much a Man ought to have to be a Juror by the ancient Laws of this Realm.

Before a Statute was made concerning the Quality of a Juror, his Sufficiency was left to the Discretion of the Justices.
After.

Afterwards by the Statute of 2 H. 5. cap. 6. he was to have 40 s. *per Annum*, which by 27 Eliz. cap. 6. was encreased to 10 l. *per Annum*, either of Freehold or Copyhold.

Only in Corporations, Trials of Felonies may be by Freemen worth 40 l. in Goods, though they have no Freehold, *per* 23 H. 8. c. 13. and so the Law is in other Cases. *Raym.* 486.

3. *Propter Affectum.*

As to this Matter there is a principal Challenge, when there is either express Malice or Favour; as if the Juror be of Kin to either Party, let it be never so remote; or if there be any Affinity by Marriage; nay if he be Godfather to either.

If he hath given a Verdict already in the same Cause; but then he must produce the Record, if he will conclude it as a principal Challenge.

But yet in the Case of the Regicides, it was resolved, That if an Indictment is found against several, and some of them are found guilty by a Jury, and some of those Jury are returned to try the rest in that Indictment, 'tis no Challenge to say, That they have already given their Verdict against others who were indicted for the same Offence; because in Law 'tis a several Indictment against every one, and the Jury are to give their Verdict upon particular Evidence against each Criminal; and therefore it doth not follow, that because they have found one guilty, they will find the rest so too. *Keil.* 9.

This is very true, but 'tis a strong Presumption that all will be found guilty.

The Question was concerning a Way, and the Juror was challenged, because he had affirmed before the Trial, That there was a Way, and that it would be an Injury to the County if it should be found otherwise; and the Challenge was allowed.

Indictment in *B. R.* for a Battery committed at *Canterbury*, *Sid.* 244. and one of the Jurors was challenged, because he had been of the Grand Jury who found the Battery, and it was allowed.

It was likewise allowed, because the Prosecutor had been entertained at the House of a Jury-man. 1 *Vent.* 309.

These Challenges to the Favour are many, which must be left to the Discretion of two Triers, who are sworn by the Court out of the Jury returned to try whether there is any Cause of Favour or not.

Their Oath is, *ff. You shall well and truly try whether B. (the Jury-man) stand indifferent between the Parties to this Issue.*

If a Juror is served with a *Subpoena* as a Witness on either Side, or hath declared how he will find his Verdict, or for whom, these are good Challenges to the Favour. 1 *Bull.* 121.

But he shall not be examined to any Matter Criminal or infamous of himself, in Order to challenge him.

There can be no Challenge, either to the Array, or to the Polls, till the Jury is full, and that as well by a *Tales*, as if all

on the Principal Panel appear; and 'tis too late after they are
 * Yelv. 3. * sworn. *Hob. 233.*

In an Appeal of Manslaughter, a Man may challenge twenty Persons peremptorily, as well as upon an Indictment of Murder; 'tis true at Common Law a Man might have challenged any Number peremptorily under three full Juries, and therefore he might challenge thirty-five without shewing any Cause, and if he challenged more, he was to be hanged: But by the Statute of 22 H. 8. 'tis now reduced to twenty; and if he challenge more, there is no Penalty, but the Court is to over-rule the Challenge.

Moor 12.

Only in Case of Treason and Petit Treason, he may challenge thirty-five, *per 1 & 2 Ph. & Mar. cap. 10.*

Dyer 152.
B.

Two were arraign'd for a Robbery, and they severally pleaded, Not guilty; a *Ven. fac.* was returned, they both challenged three of the Jury; then one of the Robbers challenged the four next in the Panel peremptorily, but the other did not join in that Challenge; and those four were sworn of his Jury, and found him guilty: And since there was but one *Ven. fa.* the Question was, Whether a Juror could be withdrawn and allowed in one and the same Panel? And it was held he might; for no Judgment was given that he should be withdrawn, but that he should be set aside for a-while; for probably the Party might release his Challenge by Consent of the Attorney General.

A Man challenged thirty-six, and it was formerly held, That he should be prest, because he refused the Law: This being not a satisfactory Reason, 'tis now held, That he shall be hanged,

The Form of a Challenge to the Array, because the Sheriff who returned is of Kindred to one of the Jury.

Et super hoc idem T. P. calumniat arraiaiment' Panelli p[re]s quia dicit quod Panellum illud arraiat' fuit per quemdam J. L. nuper Ric' Com' p[re]dict' consanguineum p[re]dict' J. O. videlicet filium D. Dozoriz B. Matris p[re]dict' J. O. & pet' quod Panellum illud allegatione p[re]s cassetur, &c.

Where the Challenge is for that the Panel was returned at the Instance of either Party.

The Challenge tried, and quashed the Array.

Et super hoc p[re]dict' T. calumniat arraiaimentum Panelli illius quia dicit quod Panellum illud arraiat' fuit per J. L. nuper Ric' Com' p[re]dict', ad denominationem p[re]dict' J. B. & in favorem ejus, que quidem Calumnia per Triatores h[ab]et Jur' comperta est vera.

Champerty.

Champerty.

TIS an Offence, viz. where any Person expecting Part of the Thing in Variance, doth by himself, or any other, move or prosecute the Suit at his own Costs and Charges. The Punishment is a Fine, and Imprisonment for three Years.

My Lord Coke tells us, That *Champerty* is *Maintenance*, but ^{2 Inst. 208.} not a *Converso*; so that the Difference between these Offences ^{1 Inst. 368.} seems to be thus: *Champerty* is where the Party prosecuting is ^{B.} to have Part of the Land or Goods, &c.

Maintenance is where the Prosecutor is to have no Part of the Thing in Variance.

An Indictment for Champerty.

Sussex, ff. **J**UR', &c. quod cum de communi Concilio Regni Artic. super Regis Anglie probisum sit, quod nullus Minister Chart. cap. Domini Regis nec aliquis alius manuteneat pla- 11.

cita querelas vel negotia que sunt in Curia Dom' Reg' de ter- * If in ris, tenementis, aut aliis rebus quibuscunque pro parte rei pe- Chancery, tite, vel alio proficuo per conventionem factam inde habend' then say, nec aliquis jus suum sub huiusmodi conditione alteri dimittat Quoddam prout in eodem Statuto plenius continetur. Quidam tamen negotium J. O. decimo quinto die Decembris, Anno, &c. * quoddam pla- quod fuit citum loquere que fuit in Curia dict' Dom' Reg' coram ipso mino Rege Dom' Reg' per Breve ejusdem Reg' inter T. P. & J. S. de pla- nunc in cito debiti triginta librarum quas idem T. P. de prefato J. S. ex- Cancellaria igeat pro parte debiti pred' & damnozum in ea parte recupe- sua apud rand. habend' viz. pro dimidio debiti & damnozum illorum per Westmon. conventionem inter pred' J. O. & T. P. fact' apud L. in Com' Midd. per pred' assumpsit manutenend' & manutenuit contra pacem Dom' Breve Dom. Reg' nunc & contra formam Statuti pred' in huiusmodi casu Regis de edict' & probis, &c. Suppensis ter, &c. pro, &c. sic.

An Indictment for Maintenance.

Sussex, ff. **J**UR', &c. quod J. O. de, &c. in Com' pred' Yeoman, quandam querelam que est in Curia Dom' Reg' nunc coram ipso Rege inter T. P. querentem & R. B. defendentem de placito quod idem R. reddat eidem T. quinquaginta libras quas ei debet, & injulte detinet predict' primo die Decembris, Anno, &c. supradicto apud L. in Com' pred' ex parte predict' R. manutenuit & sustentabit in justitie manifestam retardationem & disturbantiam, ac in pred' Dom'.

Churchwardens.

Dom' Reg' nunc contemptum & pzed' R. B. grabamen ac contra formam Statut. &c.

Chance-meddy. See Homicide.

Church. See Divine Service.

Churchwardens.

ARE very ancient Officers, and by the Common Law are made a Corporation to take Care of the Goods of the Church, the Property whereof is in them.

* An. 1604. They are to be chosen by the Canon, * *Fac.* 1. by the joint Consent of the Minister and the Parishioners; and if they disagree, then the Minister is to chuse one, and the Parish another every Year in the *Easter Week*, unless there is a Custom to the contrary, which must be observed. 2 *Roll. Abr.* 287.

1 Vent. 266. When he is chosen by Virtue of any Custom, tho' against the Canon, yet if the Archdeacon refuses to swear him, a *Mandamus* will lie to compel him to it. And if the Archdeacon should refuse one who is chosen, and appoint another against the Consent of the Parish, B. R. will grant a special Writ to the Bishop to swear him, *vel causam significare quare non*.

Palm. 50.

If the *Mandamus* be to swear them, setting forth that they were chosen *generally*, then a Return *generally* that they were not chosen, is good; but if it sets forth that they were chosen *debito modo*, then to return *generally* that they were not chosen, is ill; for it must set forth specially that they were not chosen *debito modo*.

Mandamus to an Archdeacon to swear a Churchwarden, was returned, that he was *Pauper & servus minus habilis*, and thereupon a peremptory *Mandamus* was awarded; for a Churchwarden is a temporal Officer, entrusted with the Parish Goods, and the Parishioners may choose and put in Trust whom they think fit, for 'tis at their Peril. *H. 8 W.*

Who may not be a Churchwarden. His Duty about profaning the Sabbath.

An Attorney cannot be made a Churchwarden; and if he is sued in the Spiritual Court, being chosen to that Office, he may have a Prohibition. 2 *Roll. Abr.* 272.

He is to see that the Parishioners come to Church every Sunday and Holiday, and to present the Names of such who are absent, to the Ordinary, or to levy 12*d.* for every Offence, *per Stat.* 5 & 6 *Edw. 6. cap. 4.* 1 *Eliz. cap. 1.*

If he find any in an Ale-house, &c. the Person is to forfeit 3*s.* 4*d.* and the Master of the House 10*s.* 1 *Fac. cap. 5.*

They are a Corporation only as to Moveables, viz. to take Goods, but not Lands, for the Use of the Church; for they cannot prescribe by the Name of Churchwardens to have Lands, &c. neither can they have any Action at Common Law to recover Goods of which they were never * possessed: But if once they had Possession, then they may have an Action of Trespass, &c. and recover Damages to the Use of the Parish, if such Goods are taken away or abused; and they may have an Appeal of Robbery, if stolen; but they cannot sell such Goods or dispose of them, without the Assent of the Parish; if they do, the Parishioners may chuse new Officers, who may bring an Action of Account against them.

Of Lands and Goods of the Church. * But they may recover such Goods by a Bill in Equity.

If any Thing belonging to the Freehold is broken or cut down, or the Walls, Windows, Doors, or Trees in the Church-Yard, &c. the Parson or Vicar, and not the Churchwardens, shall have an Action.

But the Churchwardens may maintain an Action for defacing Godb. 279. a Monument in the Church:

And so may the *Heir by Descent* have the like Action against any one who beats down or defaces *Coats of Arms*, or Monuments in the Church or Church-Yard. 2 Cro. 367.

An Action of Account was brought by the Churchwardens against their Predecessors for a Bell, in which they declared, *Quod reddant eis computum de bonis Ecclesie*; it should have been *de bonis Parochianorum*; for which Reason the Court inclined that the Declaration was ill. 1 Vent. 89.

If the Minister is disturbed, the Punishment is three Months Imprisonment without Bail, per 6 Edw. 6. cap. 4.

To disturb in Church, Chapel or Congregation, permitted by the Statute of 1 W. & M. or to misuse the Teacher, must find two Sureties to be bound in Recognizance in 40 l. and in Default thereof may be committed till next Quarter-Sessions, and upon Conviction there, forfeits 20 l.

Proof by two Witnesses before a Justice of Peace.

Going or returning from Church, may be punished by Indictment, or bound to Good Behaviour: The Offence is the same if a Layman be arrested. Quarrelling in Church or Church-Yard, if a Lay-man, may be suspended *ab ingressu Ecclesie*; if a Clergy-man, *ab Officio*. But if a Weapon is drawn with an Intent to strike, or Stroke given, the Party may be convicted at Sessions by Verdict, his own Confession, or Oath of two Witnesses, and Judgment to lose one of his Ears by cutting it off, and if no Ears, to be marked in the Cheek with the Letter F. 5 & 6 Edw. 6. cap. 4.

To apprehend those who disturb the Minister, &c. and to bring them before a Justice of Peace.

They are to present those who sit *Tipling*, &c.

Wherein they have an Authority equal with other

They Officers.

Churchwardens.

They are to execute Warrants against such who *profane* the Lord's Day, and may levy the Forfeiture of 12*d.* by Warrant from a Justice, &c. on those who curse or swear.

Wherein
they are
to be join-
ed with
others
Account.

They are to join with the *Constables* in making *Rates* for Relief of the Poor, &c. and in chusing Surveyors of the Highways, and appointing Days to work.

They are to account at the End of the Year, and to deliver what remains in their Hands, to the new Churchwardens, by a Writing indented; if they refuse, they may be presented at the next Visitation, or the new Officers may have an Action against them.

R1ym.418. If he is cited in the Ecclesiastical Court after he hath delivered up his Account, and be excommunicated, an Action on the Case lies against him at whose Prosecution he was cited.

Union of
Churches.

At Common Law, by the Concurrence of the Parson, Patron, and Ordinary, *Churches* might be united, but not *Parishes*; and such Union was of Spiritual Cognizance till the Statute, 37 H. 8. cap. 21. and then the Temporal Courts had Jurisdiction, but the Tithes and *Modus* continue after the Union.

If they are situate in a Corporation, then they may be united by the Mayor, Justices, or the greater Part of the Parish, with the Consent of the Patron, and by the Bishop of the Diocese. 17 Car. 2. cap. 3.

And the Parishioners of the Church united, are bound to contribute to the Repairs and Ornaments of the Church to which they are so united. 4 & 5 W. & M.

Seats in
Churches.

The Ordinary hath a proper Jurisdiction over them, and may place and displace whom he thinks fit: But where Custom or Prescription interposeth, there his Jurisdiction ceaseth, and the Temporal Courts give Remedy in Cases of Disturbance, &c.

But such a Prescription is not good exclusive of the Ordinary, for his not acting for many Years may be because there was no Occasion; which can never vest a Right in the Churchwardens, who are only a Corporation capable of Goods, but not of Inheritance.

A Man may have a Seat in a Church appendant to his House, and may prescribe, that he, and all those whose Estates he hath, &c. usually sat there and repaired the Seat, and in such Case a Prohibition lieth; but one cannot prescribe to a Seat in the *Body of the Church* generally, without shewing that he, and all those, &c. have, Time out of Mind, repaired it. Roll. Abr. 2 Part 288.

2 Cro. 367. The Case is the same in an *Isle of a Church*, for such a Prescription to repair the *Isle*, and to sit there with his Family, makes the *Isle* peculiar to his House, and he cannot be displaced by any Body; but Sitting and Burying there without Repairing, doth not make it so.

But

But the Ordinary hath no Power over Seats in private Chapels belonging to particular Families. *Roll. Abr. 2 Part 288.*

Are to be made by the Churchwardens, and greater Part of Taxes for the Parishioners present, after a general Notice given for that Repairs. Purpose, and not by the Churchwardens alone. *5 Rep. 67.*

1 Vent. 367.

The Charge is in respect of the Lands; and therefore if the Owner lives in another Parish, he shall be rated to repair in the Parish where the Lands lie, unless he let it by Lease, and then he shall be charged in respect of the Rent reserved thereon.

And in such Case, if the Lessee or Farmer is sued for Repairs, (as he may) because the Churchwardens may not know who is Landlord, such Lessee may plead to the Libel, That he is only the Farmer; which appearing to the Court, the Tax shall be divided between his Landlord and him; that is, The Landlord shall contribute in Proportion to the Rent reserved, and the Tenant for so much as the Land is worth above the Rent, for Lands are not usually let at the utmost Rent. *2 Roll. Rep. 270.*

A Man had a Lease of a Stall in a Market-Town, where he sold Goods once a Week, but lived in another Parish, he shall not be charged in the Market-Town. *2 Roll. 228.*

A Person living in one Parish, and occupying Lands in another, shall not be charged for the Ornaments of the Church where the Lands are, because the Inhabitants only are to be charged for Ornaments in respect of their Personal Estates. *2 Roll. Abr. 291.*

The Majority of the Parishioners at a Meeting, may make a Rate to oblige the whole Parish for altering the Place of the Communion-Table, and carrying it into the Chancel, and for raising the Ground to go up Steps to it, for they are compellable to put Things in decent Order; and there is no Rule for the Degrees of Decency, but the Judgment of the Majority of the Parish.

But the Majority cannot make a Rate to bind the rest for repairing or adorning the Chancel, because that is the Freehold of the Parson.

A Man living in one Parish, and occupying Lands in another, may be taxed towards the *new casting the Bells* of the Parish where his Lands are; for they are more than Ornaments, they are necessary to the People.

Those of a *Chapelry* may prescribe to be exempt from repairing the Mother-Church, having always buried and christened within themselves; for in such Case the Chapel shall be intended to be co-eval with the Church, and not built since for their Ease.

If there is a Chapel of Ease, which one Part of the Parish hath always used to repair, and to hear Divine Service there, but bury at another Church, they must contribute to repair that Church. If

Churchwardens.

If the Parish is unequally rated, those who are grieved, must plead it in the Spiritual Court, being sued there; but they cannot have a Prohibition. 2 Roll. Abr. 291.

Present-
ments.

Are usually made twice a Year, whereof one Time is to be a Week before *Easter*, when the old Churchwardens are to leave their Office, and the new ones are to be sworn; which they are not to be, till the other have given in their Presentments; and if they refuse, the Parson or Vicar may present, &c. They cannot be compelled to present oftner than once in a Year, except at the Visitation of the Bishop, and the Register is to receive but 4 s. for every Presentment.

The Spiritual Court tendered an Oath to a Churchwarden, to present according to the Articles of the Bishop, in which were many special Things, as to present filthy Talkers, &c. and a Prohibition was granted. 1 Vent. 124.

But if the Oath tendered had been to present according to the Ecclesiastical Laws, and the Articles are only offered by way of Direction, in such Case a Prohibition ought not to go. 1 Vent. 127. *Hardres* 364.

The Articles commonly exhibited to them to make their Presentments, may be reduced thus:

Viz. To Things which concern } The Church.
The Parson.
The Parishioners.

And first, To those Things which concern the Church; as

Alms, whether a Box for that Purpose.	Carpet.
Assessments, whether made for Repairs.	Chest with three Locks.
Bells and Bell-ropes, if in Repair	Church and Chancel in Repair.
Bible, whether in Folio.	Creed in fair Letters.
Canons, whether Book thereof.	Cups and Covers for Bread, &c.
Lord's Prayer in fair Letters.	Cushion for Pulpit.
Marriage, a Table of Degrees.	Desk for Reader.
Monuments safely kept.	Flaggon.
Parsonage House in Repair.	Font.
Church-yard well fenced.	Grave Stones well kept.
Commandments in fair Letters.	King's Arms set up.
Common-Prayer-Book.	Register-Book in Parchment.
Communion-Table.	Surplice, whether any.
	Table-Cloth.
	Tombs well kept.

2. Those Things which concern the Parson.

Articles 39, if read twice a Year.	May 29th, if observed.
Baptizing with Godfathers.	Marrying privately.
Canons, if read once a Year.	November 5th, if observ'd.
Catechising Children.	Preaching every Sunday.
Common Prayer, if read, &c.	Peace-maker.
Dead, if he bury them.	Perambulation.
Doctrine, if he preach good.	Sacrament, if celebrated.
Gown, if he preach in it.	Sedition, if vented.
Homilies, if read, or he preach.	Sick, if visited.
January 30th, if observ'd.	Sober Life.
	Surplice, if wear it.

3. Those Things which concern the Parishioners.

Adulterers, if any.	Marrying without Banns, Licence, or at unlawful Hours.
Alms-houses, if abused.	Sacraments received three Times in a Year, of all above sixteen, whereof Easter to be one Time.
Alehouses, &c. in Divine Service.	School, if abused.
Answering according to Rubrick.	Seats, if Parishioners are placed in them without Contention.
Baptism neglected by Parents.	Standing up.
Blasphemers.	Sundays, working thereon.
Church, resorting to it.	Swearers, if any.
Dead, if brought to be buried.	Women, if come to be church-ed.
Drunkards if any.	
Fornicators, if any.	
Legacies, if any given to pious Uses.	
Marrying within prohibited Degrees.	

A Churchwarden was indicted, for that he, *Colore Officii sui*, Sid. 307. *corrupte & extorsive* took a Silver Cup of S. S. for making him a *Gallery-keeper*, in St. Martin's Church: It was moved to quash this Indictment, because it was no Office, but an *Employment* under a Churchwarden; and to make a Present for such an Employment, is no Offence; but it was ordered to be tried, whether the Cup was taken *corrupte & extorsive*?

A Warrant against one for not coming to Church.

To the Constable, &c.

Suffex, ff. **W**Hereas Oath hath been made before me, That J. O. of, &c. did not upon the Lord's Day last past resort to any Church, Chapel, or other usual Place appointed for Communion

Church and Church-Yard.

Common Prayers, and there hear Divine Service according to the Form of the Statute in that Case made and provided: These are therefore to require you, &c. to bring the said J. O. before me to answer the Premises. Given, &c.

Vide plus in Titulo, Dissenters and Divine Service.

Church and Church-Yard.

ANY Man may build a Church or Chapel, but the Law takes no Notice of it as such, till it is consecrated; and therefore, whether Church or Chapel, it must be tried by the Certificate of the Bishop; which being done, the Parishioners ought then to repair it, and to keep up the Enclosures and Fences round it.

If a Question should arise, Whether 'tis *Ecclesia* or *Capella* belonging to the Mother-Church, and any Proof can be made that Sacraments have been administred in the Chapel, and the Dead buried there, then 'tis accounted a distinct Church by the Law.

1 Cro. 367. When 'tis built, neither the Ordinary or Churchwarden can give Leave to *bury* there, but the *Parson* only, because the Freehold of the Soil is in him.

Amongst the Laws of King *Ina*, this was one, That he who fought in a Church should forfeit 120 s. And by some subsequent Laws, he who is convicted of striking with a Weapon there, shall have one of his Ears cut off; and if he hath no Ears, shall be burned in the Cheek with the Letter F. which is for fighting. 5 & 6 Edw. 6. cap. 4.

Palm. 344. A Man was indicted at the Sessions in *Gloucester*, for striking with a Weapon in the *Church-Yard*; it was removed into B. R. and moved that he might be admitted to a Fine; which was denied, because the Statute appoints another Punishment as well as a Fine, viz. Loss of an Ear, &c. and therefore he ought to traverse the Indictment.

Cro. Eliz. 231. Another was indicted upon the same Statute, for drawing his Sword in the *Church*, but it did not set forth that it was with an Intent to strike; and though it concluded *contra formam Statuti*, yet it was held void, for the Reason above-mentioned.

Noy 171. 172. So where 'tis set forth *quod percussit*, if the Word *malitiose* is omitted, 'tis naught. Noy 171, 172.

Indictment

Indictment thereon.

Suffex, ff. **J**ur. &c. quod J. O. de. &c. nono decimo die Decemb. Anno Regni, &c. vi & armis apud H. in Com' pzed' in Cemeterio Ecclesie Parochialis de A. pzed' malitiose pugionem suum extraxit in quendam R. N. de H. pzed' Yeoman, ac cum pzed' pugione pzed' R. N. adtunc & ibidem in Cemeterio pzed' percussit contra pacem dict' Dom' Reg' ac contra formam Statut. in hujusmodi casu edit. & probis.

Clergy.

UNDER this Title, it may not be improper to mention some Privileges the Clergy have by Law, which are not allowed the Laity: *Viz.*

They are discharged of Purveyance.

They are not to serve in any Temporal Office, tho' they hold Lands, by Reason whereof other Men ought to serve; and if they are chosen to any such Office, there is a Writ in the Register to discharge them. Privilege of Clergy

They are not bound to serve in the Wars, neither are they to pay any Tolls or Pontage for the Goods which they have of the Church.

Before the 20 Ed. 1. they paid no Tenths to the King for their Ecclesiastical Livings, but to the Pope; but in that King's Reign, their Livings were valued all over England, and the Tenths paid to the King; and now, by the Statute of 26 H. 8. cap. 3. they are annexed to the Crown for ever.

If a Man in Orders is a Cognizee in a Statute, his Body shall not be taken in Execution; and if he is *Clericus Beneficiatus*, a *Levari facias* shall not be brought against his Goods, but a Writ to the Bishop to levy the Debt, *de bonis Ecclesiasticis*.

All which Liberties, and many more, are confirmed by *Magna Charta*, viz. *Quod Ecclesia sit libera*.

Upon a special Verdict in Trespas, the Case is, whether a Parson, who keeps Carts and Horses, should assist in Repairing the Highways, and this depended upon the Construction of the Statute, Whether Clergymen are comprehended under the general Word *Parishioners*, and adjudged that they are liable to all publick Charges imposed by Acts of Parliament, unless particularly exempted; but this Statute allowing a reasonable Excuse, the Justice should have summoned the Parson before he had made a Warrant to distrain. Vent. 274.

Mod. Cases
140.

Per Holt, Chief Justice, where a Clergyman hath no Cure of Souls, and is chosen Overseer of the Poor, he shall have no Writ of Privilege; because 'tis only to be extended to his Spiritual Revenues; and if 'tis personal in any Case, it must be only as to Common Law Offices; but the other three Judges were of another Opinion. The *Archdeacon of Rochester* had a Writ of Privilege to discharge him from the Office of *Expenditor of Romney Marsh*.

As to the Benefit of Clergy, it was introduced here by the Canon Law, exempting their Persons from any Temporal Jurisdiction. 'Tis a Privilege on purpose to save the Life of a Criminal in certain Cases, if he was a Man of Learning, as accounted in those Days, for as such he might be useful to the Publick; and as its Original was by the Law of the Church, so it was for some Time only allowed to Clerks in Orders: But this seems to be an Usurpation upon the Laity, because at first it was extended to any Person who could read, he declaring that he had vowed, or was resolved to enter into Orders, and the Reading was to shew that he was qualified; so that Churchmen were not contented with the Exemption of their own Persons from Punishment, but would have all those who come amongst them, exempted in like Manner. But afterwards, the Reading without a Vow to enter into Orders was held good, and now 'tis become a legal Conveyance of Mercy to both Clergy and Laity. But it may be a Question, Whether it consists with Justice or not; for if two Criminals are convicted for one Offence where Clergy is allowed by Law, one may read and the other not; so that one will save his Life and the other will suffer Death, which seems not agreeable with Justice, where both equally deserve the same Punishment.

Now as to the Reading, 'tis true, the Ordinary tenders the Book, but he is only ministerial, for the Temporal Courts are the proper Judges of the Criminal's Reading; and therefore where the Ordinary answer'd, *Quod legit*, the Court judged otherwise, and fined the Ordinary, and hang'd the Person.

So that the Ordinary is only a ministerial Officer, to make a true Report to the Court; and he is commonly one of the inferior Clergy, and not the Bishop himself; and if he makes a false Report, 'tis a personal Offence in him, and finable.

The Time
of claim-
ing it.

Anciently it might be claimed by the Party himself before or after Conviction, but never till the Offender was indicted, and then upon his Arraignment he might pray it: And this, my Lord *Coke* tells us, was very prejudicial to the Prisoner, because he lost his Challenges to that very Inquest, whose finding him guilty made a Forfeiture of his Goods, and likewise the Profits of his Lands till Purgation; and therefore afterwards, viz. in the Reign of H. 6. by the Advice of the Judge, it was not allowed till after Conviction, and so the Law now stands.

At Common Law, the Court is not to tender it *Ex Officio*; 'tis true, they may in Discretion allow it where 'tis not claimed; but regularly the Criminal is to claim it as a Favour, and then the Court must allow it where 'tis by Law to be allowed.

I admit, that in the Reign of *Jac. 2.* it was resolved in the Case of *Goring* and *Geering*, upon an Appeal, that the Court might delay to call a Criminal to Judgment after a Conviction for Manslaughter, on purpose to make him liable to an Appeal.

But this was since denied to be Law in the Case of *Armstrong* and *Lisle*, *Mich. 8 Will. viz.* That since several Statutes have been made to extend the Benefit of Clergy to Persons in particular Cases, that the Court ought, *ex Officio*, to call the Party to Judgment upon a Conviction of Manslaughter, and to allow him the Benefit of Clergy, if he prays it.

That to suspend or delay such Allowance, is to deprive him of that Defence by which he might prevent a Conviction of Murder upon an Appeal, and that 'tis a manifest Injury to the publick Justice, unless there is some legal Reason appearing out of the Record it self to justify such Delay; for since he may be found guilty, either of Murder or Manslaughter upon the same Indictment, it would be unjust to hang him upon one Verdict, and not allow him that Benefit which the Law hath given him to save his Life upon the other, which will be not only to put it twice in Danger, but to subject it to the arbitrary Opinion of a Court, tho' he might be saved by Law.

'Tis both for the Benefit of the King and the Party, not to have the Allowance of the Clergy till after Trial: Because, if convicted, the King may be intitled to the Forfeitures; and if acquitted, then he stands not in need of this Privilege.

Now if a Man cannot read where Clergy is allowable, and 'tis recorded by the Court *Quod non legit*; if the Offender should be reprieved till the next Assizes, the Book may be tender'd to him again, because 'tis *in favorem vite*, for which Reason he may have it under the Gallows. *Dyer 205. b.*

Anno 4 Eliz. one *Stone* committed two Felonies in the same Day, and Clergy was allowable for one, but not for the other: He was first indicted for that Felony for which he might have Clergy, and was found Guilty, but could not read, so the Court recorded *Quod non legit*, but he was reprieved till the next Assizes; then he was indicted for the other Felony, and found Guilty, but before Judgment, prayed that the Book might be tendered to him again for the first Offence, and had it, and could then read, and the Entry was contrary to what was before, *Quod legit ut Clericus*; but there was an Omission of these Words, *Quod cremetur & tradatur Ordinario*, and the Question was, Whether he should have Judgment of Death upon the last Indictment? And held he should not, because if the Entry had been *Quod legit, &c. & tradatur Ordinario*, he ought not to be

be arraigned on the last Indictment ; for by the former Conviction and Clergy allowed, and the Party reading, he is discharged from all Felonies done before that Time, and is afterwards the Prisoner of the Ordinary, and 'tis the Fault of the Officer for not making the Entry as he ought. If they had a Mind to hang the Man, he ought to be indicted for that Offence first for which he could not have Clergy.

But by a late Statute we are told, That the Tending the Book to read is found by Experience to be of no Use ; therefore the Offender is not required now to read, but he is to be punish'd as a Clerk convict without reading. 5 *Anna.*

Concern-
ing the De-
livery of a
Criminal
to the Or-
dinary.

The common Law would not allow a Clerk, convicted by a Petty Jury, to be delivered to the Ordinary ; but this was abridg'd by the Statute 25 *Ed. 3. cap. 4.* which enacts, That every Clerk, convicted of Treason (not touching the King himself) or Felony, shall be delivered to the Ordinary ; but tho' he was to be thus delivered, yet Purgation was not to be made, if the Crime was notorious, for that would have been to contradict a Constitution then made by the Archbishop of *Canterbury*, which forbid the Allowance of Purgation to such Offenders.

My Lord *Hobart* was of Opinion, That this Constitution was made in Retribution for that Statute, and 'tis very probable it was so, because both were made in the same Year ; and since that Act had enlarged the Jurisdiction of the Church beyond the Bounds of the Common Law, it seem'd a Compliment by the Archbishop to the Parliament, to prohibit Purgation to Clerks charg'd with grievous Offences.

Before the making of this Statute, *viz. Anno 3 Ed. 1.* the Ordinary would usually demand a Criminal, tho' not in Orders, and would discharge him without Purgation ; but this was remedied by the Statute of *Westm. 1.* so that afterwards, if he had demanded any Person who was not a Clerk, the King might seize his Temporalities for a Contempt ; but by that subsequent Act of 25 *Ed. 3.* it was made an Offence only finable.

The Courts of common Law would not then deliver a Clerk who stood as a Criminal before them, until an Inquisition was taken, that it might appear upon a Record whether he was guilty or not ; and this was a prudential Way to punish the Offender, in Case he was guilty, for tho' the Ordinary might and usually did discharge him afterwards, yet he could not discharge the Forfeitures which were incurred and vested in the King by the Finding of the Jury.

A Parson convicted of Manslaughter had his Clergy, and there was a Libel against him in the Spiritual Court, *Quod convictus fuit de Homicidio*, and this was alledged as a Cause to deprive him ; he moved for a Prohibition, but it was denied, for the Allowance of Clergy did not disaffirm the Judgment ; and the

the Proceeding in the Spiritual Court for a Deprivation, by reason of the Conviction, is in Affirmance of the Verdict. 'Tis true, the Statute 18 *Eliz. cap. 7.* takes away Purgation; but before the Statute, Purgation did not take away but affirm the Verdict; for when the Person prayed his Clergy, and was delivered to the Ordinary, he was examined by twelve Spiritual Men, and if acquitted upon that Examination, he was not then to be deprived; but yet the first Conviction remained in Force, for the Examination by the 12 Clerks was only *de Credulitate*, and not upon Oath. 1 *Cro.* 431.

Now tho' Purgation is taken away, yet it may not be improper to shew how the Law was formerly, as to that Matter.

Purgation, was either

1. Canonical; this is taken away by the Statute of 28 *Eliz. cap. 7.* or
2. Vulgar, *viz.* by Combat, Fire or Water; now abolished.

Canonical Purgation was when the Criminal made Oath, That he was clear of the Matter charged on him, and brought 12 of his Neighbours of good Credit, such as the Court should assign, to swear that they verily believed he had taken a true Oath; this my Lord *Hobart* calls a counterfeit Verdict *de Credulitate*: These Men were to be as an Inquest, to enquire into the Life and Manners of the Accused.

Some were delivered *absque Purgatione*; this was after Conviction, and then the Ordinary could not admit them to Purgation, but they were to be *penaliter custoditi* in his Prison with Bread and small Beer, and could never be restored to Liberty without a Pardon.

For it was but reasonable, that since the Ordinary could not have the Criminal but by the Permission of the King; and the Law was, That he should not be admitted to Purgation after Conviction in his Courts, because that would be to controvert their Proceedings; and therefore they deliver'd him to the Ordinary after Conviction, *absque Purgatione*; for without that restraining Clause a Criminal was often admitted to Purgation even after Conviction; but if that Clause was added, then it was a *Premunire* to admit him, &c.

At Common Law, the Punishment of a Person convicted of Felony was,

1. Forfeiture of Goods which he had at that Time.
2. Loss of Liberty.
3. Incapacity to purchase.

And thus the Criminal remained till he was admitted to the Benefit of Clergy, but then he was not restor'd to his Credit till Purgation.

Clergy.

In those Days an Offender might have his Clergy, even for Murder, *toties quoties*; but this was restrained by the Statute of 4 H. 7. cap. 13. viz. That he should have it but once. And for the better Observance of that Law, it was then provided, That the Criminal should be marked upon the Brawn of the left Thumb, that he might be known again upon a second Offence.

This was the first Statute which was made about Burning in the Hand, which was not intended as any Part of the Judgment, for then it could have been pardon'd upon an Appeal: It was only a Mark set upon the Offender, that he might not have his Clergy a second Time.

It was an usual Thing at that Time to deliver the Offender to the Ordinary after Burning, in order to make his Purgation, that he might be restored to his Credit; but now by the Statute of 18 Eliz. cap. 7. he is to be enlarged by the Court, &c.

So that it seems plain, since the Making those Statutes, a Criminal, if not burnt in the Hand, is in the same Case as a Felon was at Common Law after Conviction, and before Purgation, that is, his Credit was lost, he is incapable of being a Witness, for the Law is not satisfied till he is either burnt, &c. or pardoned: 'Tis true, he may be bailed in Order to get a Pardon, but till then the Conviction is still upon him.

But after Burning, the Judge may detain him, if he thinks fit, till he find Sureties for his Good Behaviour; or he may discharge him.

Who shall have the Benefit of it at Common Law. All Offenders whatsoever, except in Treason against the Person of the King, & *toties quoties*; but by the Statute of 25 Ed. 3. cap. 4. it was prohibited in Treasons; and by that of 4 H. 7. it is restrained to one Time, and no more.

So that now there are but very few Cases wherein the Common Law denies Clergy; but in many it is taken away by several Acts of Parliament.

In what Cases it is taken away by Statute.

'Tis a Rule in Law, That where a Statute creates a new Felony, the Offender shall have his Clergy, unless it is expressly taken away by that or any other subsequent Act.

Now the first Law which made a new Offence, and took away Clergy from the Offender, was the Statute of 7 H. 7. c. 1. which made it Felony for a Soldier to depart from his Colours without Licence; and before that King's Reign, there was no Law to take away Clergy in Cases of simple Felony.

'Tis farther to be observed, that where-ever Clergy is taken away by a particular Statute, the Offence laid in the Indictment must be brought within that very Statute, otherwise the Offender shall have Clergy.

As if he is indicted upon the Statute of 8 Eliz. c. 4. for picking a Pocket *privily*, &c. the Words *clam* & *secrete* must be inserted.

Accessory.

- Accessary. — Before the Fact in Petty Treason, Murder, &c.
- Armour. { Imbeziling Ordinance, Munition or Victuals, Value 20 s. for War, 31 *Eliz. cap. 4.* Or Naval Stores, Value 20 s. &c. 22 *Car. 3. cap. 3.*
- Bail. { Acknowledging, or procuring to be acknowledged, any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, Judgment in the Name of another not consenting or privy. 21 *Jac. cap. 26.*
- Bankrupts. { Bankrupt, or any other Person by his Order, Consent or Privy, removing, concealing, destroying or imbeziling any Goods, Moneys or Effects, whereof he or any Person in Trust for him, was possessed or entituled to the Value of 20 l. or any Books of Accounts, Bonds, Bills or other Writings relating thereunto, with an Intent to defraud his Creditors; and being convicted thereof shall be a Felon without Benefit of Clergy. 5 *Geo. cap. 24.*
- Booth, &c. { In Fair or Market, any Body being in it. 5 & 6 *Ed. 6. cap. 6.*
- Breaking. { In Day-time, and taking to the Value of; 5 s. 39 *Eliz. cap. 15.* Vide Robbery.

One *Evans* went into a Chamber in the *Inner Temple* through the Window, and took 40 l. and *Finch* was upon a Ladder on the Outside of the Chamber at the same Time, and in View of the other; now tho' they were both Principals, yet since Clergy was taken away by the Statute 29 *Eliz.* from such as enter and take away; and since *Finch* did not enter, he had his Clergy. *Cro. Car. 417.*

- Bastard-Child. { Mother concealing the Birth. Anno 21 *Jac. cap. 27.*
- Burglary. — 23 *H. 8. cap. 1.* Vide 3 *A. c. 6.* Tit. Burglary.
- Buggery. — 5 *Eliz. cap. 7.* 3 & 4 *W. cap. 9.*
- Burning. { Houses or Barns full of Corn. 23 *H. 8. cap. 1.* 25 *H. 8. cap. 3.* 43 *Eliz. cap. 13.*

For burning Houses, or Barns full of Corn, Clergy is taken away, by the Statute 23 *H. 8. cap. 1.* and for several other Offences therein mentioned.

Afterwards, by the Statute 1 *Ed. cap. 12.* Clergy is taken away for the same Offences which are mentioned in the Statute of 23 *H. 8.* But Burning of *Dwelling-houses* is omitted in this last Statute, which is, That in all other Cases of Felony, except those therein mentioned, Clergy shall be allowed; and

Clergy.

because Burning, &c. was not mentioned therein, it was the Opinion of Justice *Staundford*, That the Principal should have his Clergy, and *Anno 25 Eliz.* he had it accordingly.

Challenge of Jurors.	{ Above twenty, or do not directly answer; 3 & 4 <i>W. & M.</i> if the Indictment be for such an Offence for which Clergy is not to be allowed, if convicted by Indictment or Confession. 1 <i>Anne</i> , cap. 9.
Conjuration.	{ Convicted thereof, or of Witchcraft, &c. to kill, consume or lame any Person, undertaking to tell where Goods lost or stolen may be found, or to provoke any unlawful Love, or to destroy or hurt Cattle, or Goods or Person; first Offence, Imprisonment for a Year without Bail, only once in a Quarter of that Year, must stand six Hours in the Pillory in some Market, &c. second Offence is Felony without Clergy. 1 <i>Jac.</i> 1. cap. 12.
Debentures.	{ Debentures made knowingly or fraudulently or Altering or Counterfeiting them; adjudged Felony, and the Offender shall suffer Death without Benefit of Clergy. 5 <i>Geo.</i> cap. 14.
Egyptians.	{ Transported here, and staying above a Month. 1 & 2 <i>Ph. & M.</i> cap. 13.
Exchequer-Bills.	{ Any consorting with them above a Month, and above 14 Years of Age. 5 <i>Eliz.</i> cap. 20.
	{ Exchequer-Bill, Forging or Counterfeiting it, or any Endorsement thereon, or tender in Payment such forged Bill, or demanding to have it changed for ready Money by the Bank, or by any Receiver or Collector knowing it to be forged, or with an Intent to defraud; and being convicted thereof, shall be a Felon without Benefit of Clergy. 7 & 8 <i>Willi.</i> cap. 31. par. 78. 6 <i>Geo.</i> cap. 4.
Forgery.	—Second Conviction. 4 <i>Eliz.</i> 14.
Bank-Bills.	—8 & 9 <i>Willi.</i> cap. 19.
Stamps.	{ 9 & 10 <i>W.</i> cap. 25. par. 59. or 6 <i>Geo.</i> cap. 21. par. 60. 6 <i>Geo.</i> cap. 4.
South Sea-Bonds.	{ 9 <i>Anna</i> , cap. 21. 6 <i>Geo.</i> cap. 4. par. 56.
Lottery-Orders.	{ 12 <i>Anna</i> , cap. 2. 5 <i>Geo.</i> cap. 1.
Bills.	—For Assurance of Ships. 6 <i>Geo.</i> cap. 18 par. 13.
Stamps	{ On Cards, Dice, Linen, Silks and Leather. 9 <i>Anna</i> , cap. 11; cap. 23. 10 <i>Anna</i> , cap. 19. 5 <i>Geo.</i> cap. 2. 6 <i>Geo.</i> cap. 21. par. 60.

- Horse-stealing. { 1 Ed. 6. cap. 12. 3 Ed. 6. cap. 33. These Statutes mention only the Principal Horse-stealer, and therefore the Accessary shall have Clergy. Dyer 99. See 31 Eliz. cap. 12.
- Maiming. — Person maliciously. 22 & 23 Car. 2. cap. 1.
- Maid. { Taken away, having Lands, &c. 3 H. 7. cap. 2. Vide Women.
- Murder. { 23 H. 8. c. 1. But the Person must be found guilty; for if he was outlawed, he might have Clergy, notwithstanding the Act.
- Murder. { This Defect was remedied by 25 H. 8. but still the Law was not compleat, because those Statutes did not extend to a Person confessing the Fact; and therefore it was remedied by 1 Ed. 6. cap. 12.
- Outlary. { For an Offence not within the Benefit of Clergy. 3 & 4 W. cap. 9.
- Northumberland. { Notorious Thieves and Spoilers taken there, or in Cumberland. 18 Car. 2. cap. 3. 29 Car. 2. cap. 2.
- Outlary. { For an Offence not within the Benefit of Clergy. 1 Ed. 6. cap. 12. 4 & 5 P. & M. c. 4. 8 El. 18 El. c. 7. 22 Car. 2. c. 5. 3 & 4 W. c. 9.
- Pick-Pocket. { 8 Eliz. c. 4. Taking above 12 d. from the Person clam & secrete, for otherwise Clergy is to be allowed. H. P. C. 231.
- Piracy. { The Accessary before and after to suffer, as Principal. 11 & 12 Willi. cap. 7. 4 Geo. cap. 12.
- Poisoning. — Of Malice prepensed. 1 Ed. 6. cap. 12.
- Popish Recusants. { Those who are appointed to abjure, and refuse, or return again. 35 Eliz. cap. 1 & 2.
- Priests, &c. { Those who receive them, being Natives of England, and ordained by the See of Rome. 27 El. cap. 2.
- Rape. — 18 Eliz. cap. 7.
- Rioters. — 1 Geo. cap. 8.
- Robbery in the Highway. { If found guilty upon Indictment. 23 H. 8. c. 1. If mute, or challenge above 20. 25 H. 8. c. 3. If attainted. 1 Ed. 6. c. 12.

It must be alledged to be done * *in alta via Regia*; for if it is a *Foot-way*, he shall have his Clergy; but *in via Regia* without *alta*, he shall not have Clergy. Moor 5. Het. 75. * For so is the Statute.

Vide 5 Aff.
c.6. & c.31.

- Robbery in a Dwelling-house, shops or Ware-houses, Stables, &c. } Taking Goods by Day or by Night, the Owner or other Person being there, and put in Fear; or shall rob any Dwelling-house in the Day-time, any Person being therein; or break a Dwelling-house, Shop or Ware-house thereunto belonging, in the Day-time, and taking Goods to the Value of 5*s.* tho' no Person be therein; the Principal Offenders and the Accessories, and those who counsel, hire or command any Person to commit Burglary, 3 & 4 *Will. & Mar.* Being indicted and standing mute, or challenge above twenty Jurors.
- Ship. } Destroyed by Mariners. 1 *An. c. 9.* 4 *Geo. c. 12.*
- Soldier. } Departing without Licence. 2 *Ed. 6. cap. 2.*
- Stabbing. } Wandring without a Testimonial from a Justice 39 *Eliz. cap. 17.*
- Transported Felons and returning within the Time. 4 *Geo. cap. 11.* 5 *Geo. cap. 28.* 6 *Geo. cap. 23.*
- Woollen-Cloth. } Cloth cut and taken, stole or carried away from Tenters in the Night-time. 22 *Car. 2. cap. 5.*
- Wool. } Unlawful Transporters, &c. 4 *Geo. cap. 11.* and returning after Transportation.
- Woman. } Stolen, having Lands or Goods, or being Heir apparent, he that marries, defiles, or receives her knowingly. 3 *H. 7. cap. 2.*
- Accessaries. Clergy taken from Accessaries by Statute. } 'Tis a Rule in Law. Where a Statute takes away Clergy from the Principal, it is not by that Means taken away from the Accessary, unless particularly named.
- In Burglary. } Accessories before and after the Fact. 3 & 4 *W. & M.*
- In Burning Houses or Barns. } Accessories in all Cases. 4 & 5 *P. & M. c. 4.*
- Buying and receiving stolen Goods. } Knowing them to be stolen, are Accessories to the Felony after the Fact. 3 & 4 *W. & M. cap. 9.*
- 1 And. 195. Murder. } Accessories before the Fact. 4 & 5 *P. & M. c. 4.*
- The Words of this Statute are, viz. If a Man command, counsel or hire another to commit wilful Murder, he shall not have the Benefit of Clergy. One Mr. Grevill was indicted, for that *malitiose excitavit, movit & procurabat* the Principal to commit Murder. Now tho' these Words differ from those in the Statute, yet the Indictment is good; for to move and procure a Thing to be done, amounts to Counselling, and is the same in common Sense and Understanding.

Pick-

Clerk of the Peace.

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Pick-Pocket { Accessories, viz. to those who rob any Person.
3 & 4 W. & M.

Rape. — Accessories.

{ Accessories in all Cases. 4 & 5 Ph. & M. cap. 4.

The Words of the Statute, Ph. & Ma. are, viz.

If a Man shall *Maliciously* command, &c. another to commit the Robbery; the Indictment was against a Person for *procuring* and *counselling* the Principal to do it, leaving out the Word *malitiose*. Now though that Word

H. P. C. 23.
Dyer 182.

Robbery in
the High-
way, or
Dwelling-
House.

might be properly applicable to other Offences mentioned in that Act, as Treason, Murder, &c. yet in Robberies it may not be so, because in that Crime there is seldom any Malice, but rather a covetous Desire of getting; but it being a material Word, and particularly mentioned in the Statute, the Indictment is not good without it.

Accessaries to robbing Dwelling-house, Shop or Ware-house, and taking in Money or Goods to the Value of 5 s. 3 & 4 W. & M.

{ Convicted of an Offence for which a Man may have Clergy, shall upon her Prayer suffer the same Punishment the Man should, and may be kept in Prison, not exceeding a Year; but upon her second Conviction shall suffer Death. 4 & 5. W. & M.

Woman.

{ Clerk of the Crown, of the Peace, or of the Assizes, certifying by Transcript the Indictment, or the Tenor thereof, to the Judges or Justices in any other County, that the Person had the Benefit of the Clergy, that shall be a sufficient Proof thereof.

Clerk of the Peace.

HE is an Officer at the Common Law, for he is Clerk to the Conservators or Justices of the Peace; and 'tis very probable he was first instituted by them to make Entries, and to record their Proceedings. His Beginning, and by whom appointed,

In former Times, the *Custos Rotularum* had the Keeping of those Records; but afterwards when that became an Office of Honour and Dignity, then he appointed a Clerk of the Peace.

Thus it stood till 37 H. 8. and then a Law was made, reciting, That the Chancellor had taken upon him an Authority to make a *Custos* for Life, and he to appoint a Clerk of the Peace for Life, which was a Grievance; and therefore from thenceforth the *Custos* was to be appointed by the King during Plea.

the Court of the Mistake in the Indictment, viz. That there were not 31 Days in June; but because he did not inform them before the Trial, he was fined 40*l.* and committed.

Moor 555.

He must take nothing of any Witness who shall give Evidence against a Felon, nor take more than Two Shillings for drawing any Bill of Indictment against a Felon; the Forfeiture is 5*l.* with full Costs. 10 & 11 Will.

And if he draws a defective Bill, he shall draw a new one without any Fee, under the Penalty of the like Forfeiture, to be recovered by him who shall sue for the same in any Court of Record.

Clipping, Counterfeiting and Coining of Money.

Clipping was not Counterfeiting within the Meaning of the Statute of 25 *Ed.* 3. *cap.* 2. but it was declared to be High Treason by a subsequent Statute, viz. 3 *H.* 5. *cap.* 6. and so the Law stood till 1 *Mar.* and then that Act was repealed; but afterwards, by 5 *Eliz.* *cap.* 11. Clipping, Washing, Rounding or Filing the proper Money of this Realm, (for Lucre-sake) or of foreign Money made current here, was made High Treason. 2 *Jones* 233.

Afterwards by the 18 *Eliz.* *cap.* 1. Impairing, Falsifying, or making light our Coin, or foreign Money made current here (for Lucre-sake) was made Treason: These are Crimes of the same Nature with Clipping, but they differ in the Punishment; for these later Offences work no Corruption of Blood.

But now a new Law is made to prevent the Clipping, Diminishing or Impairing the Coin of this Realm. 6 & 7 Will.

That the Buyer or Seller of Clippings or Filings, or any Person who shall knowingly have them in his Possession, shall not only forfeit the same, but likewise 100*l.* one Moiety to the King, and the other to the Informer, and shall also be burnt in the right Cheek with the Letter R. and be committed till he pay the Fine.

And in Order to discover such Persons, it is by the same Statute enacted, That two Justices in an County, and one or more * Wardens of the Company of Goldsmiths, with two or more of their Assistants, if within the weekly Bills, &c. may enter the House of any suspected Person; and if resisted, may with the Assistance of a Constable break it open, and seize the Bullion and the Person, and examine him or her upon Oath, viz. Whether it was lawful Silver, and whether the same was not the current Coin of this Realm, or the Clippings thereof * They are to carry before next Justice, who is to examine him upon before Oath, &c.

Clipping and Coining, &c.

before it was melted; and if it is not proved by Oath, as aforesaid, or by the Oath of a credible Witness, that it is lawful Silver, and that the same was not Clippings before it was melted, then the two Justices may commit the Person, and secure the Bullion, and compel the Witnesses to enter into a Recognizance to prosecute; and if the Person upon his Trial on an Indictment for melting the current Coin, &c. shall not prove by the Oath of one Witness, that it was lawful Silver, and that it was not the current Coin, &c. nor Clippings thereof before it was melted, he must be found guilty, and be committed without Bail for six Months.

He that apprehends and prosecutes such Offender to Conviction, shall receive of the Sheriff 40*l.* within a Month after Conviction, producing the Judge's Certificate.

Casting Ingots of Silver, or stamping any Marks to imitate *Spanish Bars*, Penalty 500*l.* and Forfeiture of the Silver so cast.

8 & 9 W.
Cap. 25.

By another Statute made 8 & 9 *Will.* they who make Puncheons or Dies knowingly, or mending, beginning or proceeding to make them, or assisting therein, or any Edging-Tool, or Coining-Press, or cutting Engine, or having in their Possession any such Puncheon without any lawful Authority, shall be guilty of High Treason.

So likewise any Person conveying out of the Mint any Puncheon, Die, &c. and Persons knowingly concealing the same, shall be guilty of High Treason.

The like Penalty on Persons making the Edges of any counterfeit Coin, and likewise on those who colour or guild any Coin in Resemblance of the current Coin, or round Blanks of base Metal, or gilding Silver Blanks fit to be coined.

And if any Puncheon or Die is found in the Possession of any Person not employed in the Mint, it may be seized, and produced in Evidence against such Person, and then it shall be broke into Pieces; and so shall any counterfeit Money produced in Evidence: And this must be done in open Court, or in the Presence of some Justice of the Peace, and then delivered to whom of Right it doth belong.

Persons blanching Copper for Sale, or mixing blanch'd Copper with Silver, or buying, or selling, or offering to Sale, any malleable Mixture of Metals, which shall be heavier than Silver, and look, and touch, and wear like Gold; or he who shall take, pay, or put off counterfeited mill'd Money, or any mill'd Money unlawfully diminish'd, and not cut in Pieces, for less than its Denomination doth import, every such Person shall be guilty of Felony.

This Act was at first but Temporary; but being found by Experience to be very useful, therefore it was by the Statute of 7 *Anna* made perpetual.

And whereas the Prosecution upon that Act was to be within three Months after the Offence, that Time was enlarged by this

this subsequent Statute, as to any Prosecution for Making or Mending, or beginning or proceeding to make or mend any Coining Tool or Instrument therein prohibited, or by marking Money round the Edges with Letters; for in all these Cases, the Prosecution may be at any Time within Six Months after the Offence committed.

By an Act 9 & 10 Will. it was made lawful for any Person, & 10 to cut or break in Pieces any Silver Money tendred in Payment which shall be diminish'd, or which by the Impression, Colour or Weight, shall be suspected to be counterfeit, and the Person tendring the same, shall be at the Loss; but if it is full Weight and good Money, then the Person breaking it, shall receive it at the Rate, for which it was coined.

Any Dispute arising, Whether the Piece cut is counterfeit, if in a City or Town Corporate, shall be determined by the Chief Magistrate; if in the County, then by the next Justice of Peace, who may administer an Oath, if they shall see it convenient.

The Tellers and Clerks of the Exchequer, and the general Receivers of every Branch of the Revenue and Taxes, must cut every counterfeit Piece that shall be tendred in Payment; and the better to discover the same, shall weigh in whole Sums or otherwise, all Silver Money by them received.

This was Treason by the Common Law; and it is held, Counter- That Washing, Filing, Diminishing or Selling, &c. for Lucre- feiting. fake, is Counterfeiting within the Meaning of the Statute of 5 Eliz. and the Counsellors, Consenters and Aiders within the Statute of 18 Eliz.

Forging our Coin without uttering it, is Treason; and forging foreign Coin made current, is Misprision of Treason.

Importing, or bringing counterfeit foreign Coin knowingly, is Treason, by the Statute of 25 Ed. 3. But then it must be brought from a foreign Nation, not under the Dominions of England, and it must be in Likeness of our Money, and the Importer must know it to be counterfeit, and must make Payment thereof.

One Witness is sufficient to convict the Offender.

H. P. C.

Uttering false Money, knowing it to be so, is not High 261. Treason, but a great Misdemeanour, and finable.

But if he who utters it doth know who coined it, or if he supplied the Coiner with Coining Tools, or with Silver, and Money is coined accordingly; in either of these Cases, he who utters it, is guilty of High Treason, because he is aiding and assisting to the Coining. *Kelynge* 33.

And here it may not be improper to mention the Value of Foreign Coins which pass in our Plantations abroad, the Currency whereof was settled by the Queen's Proclamation in June 1704, and the true Value of them, according to their Weight and Assays, are as follows:

Scot

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Sevil</i> Pieces of Eight old Plate, ————	0	4	6
<i>Sevil</i> Pieces of Eight new Plate, ————	0	3	7
<i>Mexico</i> Pieces of Eight 17 Penny-Weight, ————	0	4	6
Pillar Pieces of Eight 17 Penny-Weight, ————	0	4	6
<i>Peru</i> Pieces of Eight old Plate, 17 Penny-Weight—	0	4	5
Cross Dollars 18 Penny-Weight, ————	0	4	4
Ducatoon's of <i>Flanders</i> 20 Penny-Weight, ————	0	5	6
<i>French</i> Crowns 17 Penny-Weight, ————	0	4	6
Causado's of <i>Portugal</i> 11 Penny-Weight, ————	0	2	10
Three Gilder Pieces of <i>Holland</i> , ————	0	5	2
Old Rixdollars 18 Penny-Weight, ————	0	4	6

The Halfs, Quarters, and others in Proportion, but none of *Sevil Mexico*, or Pillar Pieces of Eight, tho' of 17 Penny-Weight and an half, shall pass for more than six Shillings a Piece; and the *Peru* Pieces of Eight, and Dollars and other Foreign Coins, shall be regulated according to their Weight and Fineness, in Proportion to the Pieces of Eight of *Sevil*.

A Warrant to commit a suspected Person, who could not prove that the Bullion was lawful Silver.

To the Constable of, &c. and to the Keeper of the Common Gaol for the said County at H.

6 & 7 Will. Two Justices; Imprisonment for six Months. *Suffex, ss.* **W** Hereas a certain Quantity of Bullion hath been lately found and seized in the Possession of T. P. of, &c. which said Bullion, before the Melting thereof, is suspected to be unlawful Silver: And whereas upon the Examination of the said T. P. taken before us this present Day upon Oath, he hath not made sufficient Proof, that the said Bullion, before the Melting thereof, was not current Coin, or Clippings of such Coin, according to the Form of the Statute in that Case made and provided: These are therefore to command you to convey the said T. P. to the common Gaol at H. aforesaid, and to deliver him there to the Keeper thereof, together with this Precept: Commanding also you the aforesaid Keeper to receive the said T. P. into your Custody and Gaol aforesaid, and him there safely to keep until he shall be from thence delivered by due Course of Law: And hereof fail not. Given, &c.

An Indictment for Coining and Uttering of Money.

Suffex ff. **J**UR', &c. quod T. P. de, &c. Deum pre oculis suis non habens, sed Instigatione Diabolica seductus 26 die Octobris, Anno, &c. apud Paroch' de, &c. in Com' pred' viginti pecias de cupro & ere & aliis mixtis Metallis ad instar & similitudinem bone & legalis & curren' monete Regis hujus Regni Anglie vocat' solid' (Anglice, Shillings) falso & proditorie fabricabit cudit & contrafecit ac sciens pred' viginti pecias sic ut prefertur falso & proditorie fore fabricat' culat' & contrafact' idem T. P. quinque pecias inde postea scil' pred' 26 die Octobris Anno, &c. apud, &c. in Com' pred' & alibi diversis dicti Dom' Regis subditis pro vera legitima & corrente moneta Anglie deceptibe falso & proditorie exposuit solvit & utterabit in magnum prejudicium fraudem & deceptionem dicti Dom' Reg' subditorum ac contra pacem Dom' Reg' coron' & dignitatem suos necnon contra formam Statut' in hujusmodi casu edit' & probis.

The Judgment for this Offence, and for Clipping, is to be drawn, &c. and hang'd, but not quarter'd; tho' my Lord Coke says, That the Judgment for Clipping is the same as in High Treason, 3 Inst. 17. Levinz. 2. P. 98. 1 Vent. 254.

An Indictment for Counterfeiting, and against another for Relieving after the Offence.

Middl' ff. **J**UR', &c. quod T. P. de, &c. Deum pre oculis, &c. 26 die Octobris, Anno, &c. quadraginta pecias de stanno & aliis mixtis Metallis ad instar & ad similitudinem bone & legalis monete Angl' vocat' solid' (Anglice, Shillings) falso & proditorie fabricabit cudit & contrafecit apud L. in Com' pred' posteaque scil' dicto 26 die Octobris, Anno, &c. supradicto easdem pecias sic ut prefertur falso & proditorie fabricat' & contrafact' diversis dicti Dom' Reg' subditis pro vera & legitima hujus Regni Anglie moneta apud L. pred' in Com' pred' deceptibe falso & proditorie exposuit & utterabit in magnum, &c.

Et quod J. O. de, &c. sciens prefat' T. P. prodicionem pred' modo & forma pred' fecisse & perpetrasse eundem T. P. postea scil' secundo die Januarii, Anno supradicto apud L. pred' in Com' pred' recepit & confortabit ac prodicionem pred' concealabit contra pacem dicti Dom' Reg' nunc coron' & dignitatem suas.

Cloth.

Cloth.

Under this Title, Three Things may be consider'd:

1. Such Things which relate to Justices.
2. Which relate to Overseers of Cloth.
3. Offences against the Statutes concerning Cloth, and the Penalties.

First, one Justice in the County, and the chief Officer in a Corporation *per 3 & 4 Ed. 6. cap. 2.* and afterwards by *39 Eliz. c. 20.* two Justices in the County, and the Chief Officer in Corporations, may appoint and swear Overseers or Searchers for faulty Cloth.

***Overseers** Justices * may search after and seize Ropes, Winches and Engines, used for stretching Northern Cloths, and he who may do the like. *21 Jac. cap. 18.* opposes, forfeits *10 l. 32 Eliz. cap. 20.*

Two Justices may call before them any suspected Persons, and if by Confession of the Party, or Oath of two Witnesses, it appears he is guilty, they must certify it under their Hands and Seals to the Officers of the Parish where the Offence was committed. *21 Jac. cap. 18.*

Justices neglecting to appoint Overseers, as enjoined by *39 Eliz.* or not searching for Ropes, Winches, &c. forfeit *5 l.*

Two Justices in a County, and chief Officer, if in a Corporation, with another joined with him, may inflict Whipping upon a Sorter, Carder, Kember, Spinster or Weaver of Wool, found guilty by Confession, or Oath of one Witness, of imbezilling or detaining Wool from the true Owner; and the Receiver is to incur the like Punishment. *7 Jac. 7.*

Duty of Overseers and other Officers.

Overseer, when chosen, if he refuse to execute his Office, loseth *40 s.* to the King, and to the Justices by whom appointed, and to be committed 'till paid, *3 & 4 Ed. 6. cap. 2.* and by *39 Eliz. cap. 20.* forfeits *5 l. ut prius.*

Must search once in every Quarter of a Year, or forfeits *10 l.* between King and Prosecutor. *Ibid.*

If interrupted in his Office, the Offender loseth *20 s.* between King and Overseer. *Ibid.*

No Advantage of Forfeits, unless Prosecution be within a Year after it accrues. *Ibid.*

Overseers must search once a Month for Defects in the Northern Cloths. *39 Eliz. cap. 20.*

May present at next Sessions any Cloth stretched, or sealed with false Seals. *Ibid.*

Overseer must fix a Leaden Seal to each Cloth, containing the Length and Breadth thereof, with the Word [*Searched*] thereon; and this is an Exemption from any further Search.

If any besides Overseers set or take away any Seal without Warrant, the first Offence is 10 *l.* convicted a second Time by two Witnesses or by Verdict, forfeits 20 *l.* to be divided between Queen, Informer and Poor, and the Offender to stand in the Pillory. *Ibid.*

Searchers may enter into any House or other Place to find deceitful Cloth. 21 *Fac. cap.* 18.

Officer being sued, may plead the general Issue, and shall recover double Costs. *Ibid.*

Searchers in a Parish, where defective Cloth is made, shall certify it by the Word (*Faulty*) stamped on the Seal. *Ibid.*

He who searches Cloth already searched, forfeits 5 *l.* to the Party grieved. *Ibid.*

Searcher must set his Name upon the Seal of the Cloth. *Ibid.*

Justices having certified under their Hands and Seals, that any Person hath used Flocks, Thrum, Hair, or other deceitful Stuff, in making broad Cloth, the Church-wardens and Overseers of the Poor of the Parish where the Offence is committed, may levy 5 *l.* upon the Goods of the Offender by Distress and Sale, &c. and distribute it to the Poor of that Parish.

By * 2 & 3 *Ph. & Mar. cap.* 11. Cloth-worker not living in a City, Borough, or Town-Corporate, must not keep more than one Loom; Forfeiture is 40 *s.* per Month.

† Whether Clothier hath set a Leaden Seal to his Cloth, declaring the just Length; if not, he may be fined. 3 & 4 *Ed. 6. cap. 2.*

If Cloth is stretched above a Yard and half in Length, and a Quarter in Breadth, the Offender forfeits 40 *s.*

Straits and Kerseys stretched above a Yard in Length, and half a Quarter in Breadth, Forfeiture is 20 *s.*

Browns, Blues, Tawnies and Violets, must be well boiled, grieved and maddered upon the Woad, and well shot with Cork and Orchel before died: Penalty 20 *s.*

Wool for Russets, Marbles, Grayes, Bayes, or Wool for Hats or Caps, must be woaded, madder'd and boiled before died; Penalty 40 *s.*

Dying with Brazile to make a false Colour; Penalty 20 *s.*

Flocks, Chalk, Flower, Starch, or any deceitful Thing put in Cloth, except *Devonshire* or *Cornwall* Straits: Forfeiture is 40 *s.*

Iron Cards, or Picards, used in rolling Wool, are forfeited, and 20 *s.* besides, all the Forfeitures to be divided between the King and the Overseer, and to be recovered in any Court of Record: Sold by any other Measure than Yard and Inch; Penalty for every Yard 6 *s.* 8 *d.*

Denying or with-holding Faulty Cloth, forfeits 10 *l.* for first Offence, 20 *l.* for second, to be divided between King, In-

* Indictment will not lie at Sessions on this Act.
4 *Mod.* 379.
† Offences against the several Acts and the Penalties.

former and Poor; and being convicted of the third Offence, must stand in the Pillory. 39 *Eliz. cap. 20.*

Justices may determine the Offences of denying or withholding, &c. in their Sessions, and Justices of Assize may convict the negligent Justice upon Proof by two Witnesses, and in Default thereof, the Penalties of 10 *l.* and 20 *l.* may be recovered in any other Court, and then the one Moiety goes to the King, and the other to the Informer. *Ibid.*

* 4 *Jac. 1.* *Kentish Cloth* * above the Price of 6 *l.* must be between 28 *cap. 2.* must and 30 Yards in Length, being wet, and 7 Quarters broad with- be between in the Lifts, and must weigh 76 Pounds after 'tis dressed; The 30 and 34 Forfeiture is 20 *s.* for want of Length or Breadth.

Yards wet, Per 4 *Jac. cap. 2.* the Forfeiture, if it exceeds in Length for and 6 Quar- every Yard and Inch so exceeding, is 10 *s.*

ters and half within If it wants Weight, the Forfeiture for every two Pounds the Lifts, wanting, is 10 *s.*

and weigh If it want Breadth, the Seller for one whole Piece forfeits 20 *s.* for half a Piece 10 *s.* and so proportionably, to be di- 86 Pounds. vided between King and Overseers, &c.

10 *A. c. 16.* By 10 *A. c. 16.* all mix'd or medley Broad Cloath shall be Mix'd or measured at the Fulling Mill, after 'tis mill'd by the Master of Medley the Mill, who shall first take an $\dagger$ Oath before some near Ju- Broad- fice, that he will truly perform such Measuring; (the Justice Cloth. to give him a Certificate of his having so done) and shall fix $\dagger$ 1 *G. cap.* at the Head-end of such Cloth, before carried away, a Seal of 17. reluf- Lead, and rivet the same, and stamp his Name thereon, men- sing to take the Oath tioning in Figures the Length and Breadth; for which the forfeits Owner shall pay him a Penny. And the Number so stampd 20 *l.* shall be a Rule of Payment to the Buyer, except by Accident any Part be damaged and taken off, and then the Part not damnified shall be again measur'd, sealed, &c.

If the Master of the Mill refuse or neglect to fix such Seal, or any Person afterwards take it off, or deface or alter the Figures before the Cloth is sold; and if the Buyer refuse to accept the same according to such Measure, the Offender convicted on Oath, forfeits $\pm$ 20 *s.* for each Cloth.

$\pm$ 1 *G. cap.* No Clothier, Fuller, &c. after such Cloth is fully wet, 17. forfeits sealed and stamped, shall stretch any Cloth above one Yard in 20 *l.* in lieu of 20 *s.* 20 Yards Length, or above one Nail in a Yard in Breadth, on Forfeiture of 20 *s.*

And every Mill-man shall keep in his Mill a Table or Board 12 Foot long and three Foot wide, whereon the Cloth shall be creased and laid plain, with the Length of a Yard mark'd thereon, with one Inch more, viz. 37 Inches long, and in Default thereof he forfeits 10 *l.*

Every Clothier, Cloth-worker, &c. shall make Payment in Money to all employed in the Woollen Manufacture for all Work done, and shall not impose on them any Goods or Wares instead of Money, on Forfeiture of 20 *s.*

Coaches and Chairs.

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All Offences against this Act to be heard and determin'd by one or more Justices of the Places where committed, (provided the Justice be not concern'd in the Matter of the Complaint) on Oath of one Witness; and all Penalties are one Half to the Informer, and the other to the Poor of the Parish. And the Offender refusing Payment for fourteen Days after Conviction, the Justice may grant his Warrant to levy it by Distress, returning the Overplus (if any) and if no Distress, commit to Gaol or House of Correction, not exceeding three Months for one Offence; and all Offences to be prosecuted within thirty Days after they are committed or discover'd.

But an Appeal lies to the next general Quarter-Sessions on giving Notice thereof. And if the Justices there confirm or disannul the former Order, they shall allow such Costs to the Party grieved, as they shall think reasonable; to be levied, &c. as is usual in Cases of Appeal. *Vide 10 A. cap. 21. & 12 A. Sess. 2. cap. 20.*

Coaches and Chairs.

THAT in London or Westminster, or within ten Miles, no Hackney-Coachman shall take for his Hire above 10 s. per Day, twelve Hours to the Day; and by the Hour, not above 18 d. for the first, and 12 d. for every Hour after; and none shall pay from any of the Inns of Court or thereabouts, to any Part of St. James's or Westminster, (except beyond Tuttle-Street) above 12 d. and the same Price from those Places to the Inns of Court or thereabouts; and from any of the said Inns, or thereabouts, to the Royal Exchange, 12 d. and to the Tower, or Bishopsgate-Street, or Aldgate, or thereabouts, 18 d. and so from the said Places to the said Inns: And the like Rates from and to any Places at the like Distances.

And none are oblig'd to pay above 12 d. for the Use of any Hackney-Coach for any Distance (not specified in the Act) so as it exceed not one Mile and four Furlongs, nor above 18 d. for any Distance (not specify'd) above one Mile and four Furlongs, and not exceeding two Miles.

In Pursuance of which Act, the Commissioners for licensing and regulating Hackney Coaches and Chairs, caused to be measured the several Distances between the most noted Places within the Limits of the Weekly Bills (not specify'd in the Act) and rated the same, viz.

N 2

From

Coaches and Chairs.

- 1 s. Rates for Coaches.*
- From Westminster-Hall to Marlborough-Street, Bolton-Street, Soho-Square, Bloomsbury-Square, Little Queen's Street, Holborn.
 - From St. James's Gate, to Queen Anne's Square, Westminster, the nearest Corner of Red-Lion-Square.
 - From Golden Square to Red-Lion-Square.
 - From the Hay-Market Play-house to Red-Lion-Square, Bloomsbury-Square, David's Inn, Queen Anne's Square, Westminster.
 - From Red-Lion-Square to Guildhall.
 - From the upper End of Fetter-Lane, Holborn, to Aldgate.
 - From the Royal Exchange to Hoxton-Square.
 - From Newgate to the Middle of Greek-Street, near Soho-Square.
 - From the King's Head Tavern, Southwark, to the Sign of Sir William Walworth.
 - From Grey's Inn-Gate to Sadler's Wells by Islington.
 - From Tom's Coffee-house in Russel-Street, Covent-Garden, to Newcastle-House near Clerkenwell-Church.
 - From Temple-Bar to Billingsgate.
 - From Aldgate to Shadwell-Church.
 - From Drury-Lane Play-house to Queen Anne's Square, Westminster.
 - From Westminster-Hall to St. Paul's Church or Queen's Square, Red-Lion-Fields.
 - From St. James's Gate to Hatton-Garden.
 - From the New-Exchange, Strand, to the Royal Exchange.
 - From the Hay-Market Play-house to Hatton-Garden.
 - From Red-Lion-Square to Westminster-Hall.
 - From St. James's to Marybone-Church.
 - From the Royal Exchange to Bloomsbury-Square, or to the Watch-House at Mile-End.
 - From the out-side of Aldgate to Stepney-Church.
 - From Bedford-Street, Covent-Garden, to Coleman-Street.
 - From Bread-Street to Upper Moorfields, and thence to Hoxton-Square.
 - From Austin Fryars Gate in Broad-Street, to Hart-Street by Bloomsbury-Market.
 - From St. Martin's Lane in the Strand to Gold-Street by Wood-Street.
 - From the End of Lombard-Street next Gracechurch-Street to Somerset-house.
 - From St. Lawrence-Church by Guildhall to Brownlow-Street in Drury-Lane.
 - From the Royal Exchange to the Church at Newington beyond Southwark.
 - From Tom's Coffee-House by Covent-Garden to the Royal Exchange.
 - From Stocks-Market to Charing-Cross.
 - From Aldgate to Ratcliff-Cross.
- 1 s. 6 d. Rates for Coaches.*

Coaches and Chairs.

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And by the said Act, the Fare for a Hackney-Chair is 1 s. Hackney-
for any Distance not exceeding a Mile, and 1 s. 6 d. for any Chairs.
Distance not exceeding a Mile and four Furlongs, which by the
said Commissioners are thus appointed, viz.

1 s. Rates for Chairs.	{	From <i>Westminster-Hall</i> to <i>Covent-Garden</i> , or to <i>Exeter-Change</i> .
	{	From <i>St. James's Gate</i> thro' the <i>Park</i> to <i>Westminster-Hall</i> .
	{	From <i>St. James's Gate</i> to <i>Somerset-House</i> .
	{	From <i>Somerset-House</i> to the upper End of <i>Hatton-Garden</i> .
	{	From the <i>Playhouse</i> at the <i>Hay-Market</i> , to <i>Bolton-Street</i> , <i>Essex-Street</i> , <i>Soho-Square</i> , the Entrance of <i>Lincoln's Inn-Fields</i> .
	{	From the nearest Corner of <i>Golden-Square</i> to <i>Drury-Lane Play-house</i> .
	{	From <i>Westminster-Hall</i> to <i>Marlborough-Street</i> , <i>Soho-Square</i> , <i>Bolton-Street</i> , <i>Temple-Bar</i> .
	{	From <i>St. James's Gate</i> to <i>Queen Anne's Square</i> , <i>Westminster</i> .
	{	From <i>Golden-Square</i> to the <i>Red-Lion-Square</i> .
	{	From <i>Red-Lion-Square</i> to the <i>Hay-Market Play-house</i> .
1 s. 6 d. Rates for Chairs.	{	From <i>Queen's-Square</i> to the said <i>Play-house</i> .
	{	From the <i>Hay-Market Play-house</i> to <i>Bloomsbury-Square</i> , or <i>Grey's Inn</i> .

And by the said Act, the Number of the said Coaches are limited to 800, and Chairs to 200. And if the Commissioners licence above the Number, they forfeit 100 l. Each Coach to pay 5 s. per Week Monthly, and each Chair 10 s. per Ann. And a Coach, &c. without a Licence is 5 l. and a Chair 40 s. Forfeiture; and Coach-Horses to be 14 Hands high, &c.

And the Commissioners may make Rules, Orders, and By-Laws, to be allowed by the Lord Chancellor, &c. and one Justice may punish, inflict, and put in Execution any the Forfeitures, Penalties, &c. 1 G. c. 17.

Persons refusing or neglecting to pay Coachman or Chairman what is justly due to him, or wilfully cutting, defacing, or breaking any Coach or Chair; upon Complaint a Justice of Peace is to grant his Warrant for the Offender to come before him; and on Conviction on Oath, award Satisfaction; and on Refusal to pay, &c. bind over to the next General Quarter-Sessions.

A Person driving a Coach, or carrying a Chair for Hire, not being interested himself in a Licence, but acting under another, being guilty of any Misbehaviour in his Employment, by demanding more than his Fare, or giving abusive Language, or any other rude Behaviour; one Justice of *London*, *Westminster*, *Middlesex*, or *Surrey*, to order him to pay, not exceeding 20 s. to the Poor. And if not able, or refuse, commit him to the House of Correction for seven Days, and to receive the publick Correction of the House before discharged.

3 Georgii,
cap. 57.

* By 9 An.
it was 40 s.

If any Hackney-Coachman, or Driver, shall refuse to go at, or exact more for his Hire than by the said Act, 9 A. is limited, he forfeits a Sum at the Discretion of the Commissioners, not exceeding * 3 l. nor under 10 s. and to be determined by three or more of them in a summary Way, by the Oath of one Witness; one Moiety to the Crown, the other to the Informer.

None but licensed Persons shall stand, ply, or drive for Hire within the Weekly Bills of Mortality, with any Coach, Hearse or Coach-Horses, or shall let to Hire any Mourning-Coach or Coach-Horses to attend on Funerals, on the Forfeiture of 5 l. a Moiety to the Informer, and the other to the Crown.

And whereas Undertakers of Funerals have hired Gentlemens Coaches of their Servants, without the Consent of their Masters, to attend on Funerals; 'tis therefore enacted, That none but licensed Mourning Coaches (except the Coaches of Gentlemen attending the Owner, or one of his Family) shall be driven to Funerals; and if any other are driven, &c. then upon Information to the Commissioners, they may summon the Driver; and he not appearing, or if he appear, and doth not prove the previous Order from the Owner, shall forfeit 5 l. to be recovered of the Driver or Undertaker.

Justices, &c. in their Jurisdictions, may inflict the like Penalties, and levy them as the Commissioners may.

Any Person riding in Cart, or Dray, not having another on Foot to guide it; and being convicted before one Justice, by the Oath of one Witness, forfeits 10 s. to the Informer and the Poor of the Parish.

Coals.

KEELS and Boats at *Newcastle*, carrying Coals, shall be marked by Commissioners, &c. and if the Mark shall be removed or altered, then on Proof by one Witness on Oath before one Justice, the Offender forfeits 10 l. one Moiety to the King, the other to the Discoverer; to be levied by Distress, by Warrant of one Justice; and if that is not to be had, then to be committed for three Months without Bail.

The Warrant to levy the Forfeiture.

To the Constable, &c.

* Or altering, or being privy to it (as the Stat. is.) Northumberland, ff. **W**Hereas W. B. of, &c. hath been duly convicted before me, for removing the Marks and Nails of the Keel (or Cart) of, &c. after the same was marked and nailed, and

and that the Mark was so removed, in order to frustrate the Intent of the Statute in that Case made and provided; for which Offence the said W. B. hath forfeited 10 l. These are therefore to require you forthwith to levy the said 10 l. by Distress and Sale of the Goods of the said W. B. rendering to him the Overplus, if any such shall happen to be: And hereof fail not. Given under my Hand and Seal, &c.

Common Prayer.

IN Anno 2 Ed. 6. the Reformers intending to bring the Worship of God under set Forms, compiled a Book of Common Prayer, which was established by Act of Parliament in that Year.

But because several Things were contained in that Book, which shewed a Compliancy to the superstitious Humours of those Times, and some Exceptions being made to it by precise Men at home, and by *John Calvin* abroad; therefore two Years afterwards it was reviewed, in which *Martin Luther* was consulted, and some Alterations were made, which consisted in adding some Things, and leaving out others, as in the former Edition.

The Additions were, viz.	{	A general Confession of Sins to the Daily Service.
		A general Absolution to the truly Penitent.
		The Communion to begin with reading the Commandments, the People kneeling.
Left out	{	And a Rubrick concerning the Posture of Kneeling; which was afterwards ordered to be left out by the Statute of the 1 Eliz. but is now again explained, as in 2 Ed. 6.
		The Use of Oil in Confirmation and Extreame Unction, Prayers for Souls departed.
		And what tended to a Belief of the Corporeal Presence in the Consecration of the Eucharist.

Afterward, Anno 5 Ed. 6. a Bill was brought into the House of Lords to enjoin Conformity to this new Book, with these Alterations; by which all People were to come to those Common Prayers, under Pain of Church Censures; which Bill passed into a Law, Anno 5 & 6 Ed. 6. but not being observed during the Reign of Queen *Mary*, it was again reviewed by a Committee of learned Men, viz. Mr. *Whitehead*, Chaplain to Queen *Elizabeth's* Mother; Dr. *Parker*, afterwards Archbishop of *Canterbury*; Dr. *Grindall*, afterwards Bishop of *London*; Dr.

Common Prayer.

Cox, afterwards Bishop of Ely; Dr. Pilkington, afterwards Bishop of Durham; Dr. May, Dean of St. Paul's, who was one of the former Committee; Dr. Bill, Provost of Eaton; and Sir Thomas Smith; and appointed to be used by every Minister, Anno 1 Eliz. with some Additions which were then made, viz.

Certain Lessons for every Sunday in the Year; some Alterations in the Liturgy.

Two Sentences added in the Delivery of the Sacrament, intimating to the Communicants, that Christ is not corporeally present in the Elements, &c.

The Form of making Bishops, Priests and Deacons, was likewise added.

Some Alterations were made in the Rubrick in King James's Reign; And as for the Additions of Thanksgivings at the End of the Litany, the Prayer for the King and Royal Family, which were not in the last Book; those were done by the Authority of that King's Commission, and are still in Force by Vertue of his Proclamation, and so are the Prayers of the Inauguration of our Kings and Queens, and against the Gun-Powder-Treason.

Upon these and other Statutes, several Things are to be considered;

1. The Punishment of a Minister for refusing to use, or depraving the Book of Common Prayer.

2. The Punishment of any other Person depraving it, and of such who shall hear, or be present at any other Form.

3. Who are bound to use it, and assent to it,

4. Who must provide it.

The Punishment of a Minister. Vide Prayer in Bail.

If he is convicted by Verdict, Confession or notorious Evidence of the Fact of refusing to use it, or using any other Form, or depraving it,

If Beneficed,

For the first Offence, by 2 & 3 Ed. 6. he forfeits to the King which of his Benefices the King will chuse: But per Stat. 1 Eliz. 2. loses his Spiritual Livings for a Year, and by both, Imprisonment for six Months, by the first Statute without Bail, and by the other indefinitely.

Second Offence, Deprivation and Imprisonment for a Year, by both Statutes.

Third Offence, Imprisonment for Life by the Statute of Ed. 6. and Deprivation and Imprisonment for Life by the said Statute of Eliz.

If

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If not Beneficed. } First Offence, Imprisonment for 6 Months, but by the Statute of 1 Eliz. cap. 2. Imprisonment for twelve Months. } Punishment of any other Person depraving or being present at any other Form.

Second Offence, Imprisonment for Life.

If any Person shall be convicted (as aforesaid) by Songs or otherwise, to have depraved it, or to procure a Minister to say any other Form, or have interrupted him to say the Service,

First Offence, per Stat. 2 & 3 Ed. 6. forfeits 10 l. to the King; and if not paid within 6 Weeks after Conviction, then Imprisonment for three Months instead thereof; but by the Statute of 1 Eliz. forfeits 100 Marks to the Queen; and if not paid (*ut supra*) shall instead thereof be imprisoned for a Year.

Second Offence, per Stat. Ed. 6. forfeits 20 l. to the King; and if not paid (*ut supra*) Imprisonment for 6 Months without Bail: But per Stat. 1 Eliz. forfeits 400 Marks to the Queen, and if not paid (*ut supra*) Imprisonment for a Year.

Third Offence, forfeits all his Goods and Chattels, and Imprisonment during Life.

Any Person convicted at the Assizes or Sessions to have wittingly heard, or to have been present at, any other Form of Common Prayer than what is expressed in the Statute of 2 & 3 Ed. 6.

First Offence, Imprisonment for 6 Months without Bail.

Second Offence, Imprisonment for 12 Months.

Third Offence, Imprisonment for Life, 5 & 6 Ed. 6. cap. 1.

Justices of Oyer and Terminer, of Assize, and Mayors and Head Officers of Corporations, have Power to hear and determine Offences against the Statute of 2 & 3 Ed. 6. The Prosecution must be at the next Assizes after the Offence committed; but per Stat. 23 Eliz. cap. 1. Justices in Sessions have the like Power. Prosecution must be within a Year and a Day after the Offence.

No Form of Prayer shall be used in any publick Place, other than according to the said Book, Who are bound to use it, and to assent to it.

Incumbent on a Benefice with Cure, residing on his Living (though he keeps a Curate) and not having a lawful Impediment to be allowed by the Ordinary, must himself once a Month read it, as by the said Book is appointed, or for every Offence forfeits 5 l. to the Use of the Poor. Conviction must be before two Justices, by his own Confession, or Oath of two Witnesses. 13 & 14 Car. 2. cap. 4.

If the 5 l. is not paid within ten Days after Conviction, then the Churchwardens and Overseers of the Poor may, by a Warrant from two Justices, levy it by Distress and Sale of Goods. *Ibid.*

No Person shall be a Lecturer, Preacher or Reader, with a Licence from the Ordinary, but must read the 39 Articles, and declare his Assent thereunto, and must read the Service the first Time

Time he preaches, and declare his Assent to it; and upon the first Lecture-Day of every Month, must read the Service, and declare his Assent, as *per Stat. 13 & 14 Car. 2.* and if he refuse, is disabled to preach till he conform: But at Sermons and Lectures in Cathedrals and Colleges, 'tis sufficient, if a Lecturer declare his Assent to all Things in the said Book.

If any Person shall preach, being disabled (*ut supra*) before he conforms, two Justices, upon Certificate from the Ordinary, may commit him for three Months.

Godb. 118. A Man was convicted for administering the Sacrament of Baptism in another Form than prescribed by the Book of Common Prayer. He was indicted the second Time for the like Offence, and had Judgment to suffer Imprisonment for a Year, and to be deprived *ipso facto* of all his Spiritual Promotions; and upon a Writ of Error brought, this Judgment was reversed, because the first Conviction was not set forth in the second Indictment, for otherwise the second Conviction doth not Warrant such a Judgment.

Indictment against a Curate, &c. for refusing to use the Common Prayers, and for speaking against the Common Prayer-Book; he was found guilty at the Assizes, and the Judge gave Judgment that he should be deprived; but upon a Motion in Arrest of Judgment, it was adjudged that both the Indictment and the Judgment were erroneous, first as to the Indictment, because it did not appear by it, that the Defendant was Curate of the Parish where he refused to use the Common Prayers; then as to the Judgment, 'tis true, the Statute said he shall be *ipso facto* deprived; but a temporal Judge cannot give Judgment of Déprivation, because 'tis a spiritual Act. Goldf. 162.

An Indictment upon the Statute of 5 & 6 Ed. 6. for hearing and being present at another Form of Prayer.

Judgment.
First Of-
fence, six
Months
Imprison-
ment with-
out Bail.

JUR', &c. quod F. C. nuper de L. in Com' S. Gen' primo die Junii Anno Regni Domini nostri Gulielmi Tertii Dei Gratia Anglie, &c. Regis decimo tertio apud L. pzed' in Com' pzed' voluntarie audivit & pzelens fuit ad aliam formam Communis pzeationis quam declarat' & mentionat' existit in quodam Libro intitulat' Liber Communis pzeationis & administration' Sacrament' & aliorum rituum & ceremoniarum Ecclesie Anglicane Authorizat' per actum Parliament' tenr' Annis quinto & sexto Regni Domini Edwardi nuper Regis Anglie sexti contra formam Statuti ac contra Pacem.

A Warrant against an Incumbent, for not reading the Service once a Month.

To the Churchwardens and Overseers of the Poor of the Parish of H. in the said County.

Suffex, ss. **W** Hereas J. S. Incumbent on the Benefice of H. with Cure in the said County, and residing on his said Living, and having no lawful Impediment allowed by his Ordinary, hath on the 3d Day of this Instant June, been lawfully convicted before us, R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, for that he the said J. S. did not in Month last past publicly read the Common Prayers in the said Parish-Church of H. in such Manner and Form as in and by the Book intituled, A Book of Common Prayer, &c. is appointed, and according as 'tis enjoined by the Statute in that Case made and provided; by Reason whereof, ^{11 & 14} Car. 2. and by Vertue of the said Statute, he the said J. S. hath forfeited ^{5 l. cap. 2.} to the Use of the Poor of the said Parish. These are therefore to require you, or some of you, to ask and demand the said 5 l. of the aforesaid J. S. and if the same shall not be paid to you, or some of you, within ten Days after such Demand and Conviction as aforesaid, then to levy the same by Distress and Sale of the Goods of the said J. S. rendring to him the Overplus. And hereof fail not. Given under our Hands and Seals, &c.

Commitment of a Lecturer, &c. for Preaching, being disabled, &c. by the Statute of 13 & 14 Car. 2. cap. 4.

To the Constable of the Hundred of L. in the County of S. and to the Keeper of his Majesty's Gaol in the said County.

Suffex, ss. **W** Hereas upon a Certificate from the Ordinary of the Diocese of C. directed to us, R. B. and W. N. two of his Majesty's Justices, &c. it doth appear that J. S. therein named, being Lecturer of the Church of H. in the said County hath preached there without a Licence by him had or obtained from his said Ordinary, and hath not read the 39 Articles in his Presence, nor declared his Assent thereunto; and hath not, upon the first Lecture-Day of every Month since he hath been Lecturer there, read the Service appointed for that Day, and declared his Assent thereunto, pursuant to the Statute in that Case made and provided; by Reason whereof, and by Vertue of the said Statute, the said J. S. is disabled to preach, until he conform to the said Law: And whereas it doth likewise appear unto us, that the said J. S. after such Disability incurred as aforesaid, and before his Conformity, that is to say, on the third Day of this Instant June, hath preached in the Parish Church of H. aforesaid,
contrary

contrary to the Form of the said Statute : These are therefore in his Majesty's Name, to require you to apprehend the aforesaid J. S. and to convey him to the common Gaol of the said County, and to deliver him safely to the Keeper of the said Gaol, together with this Precept : Hereby also commanding you the said Keeper to receive the said J. S. into your Custody, and him safely there to keep for the Space of three Months next ensuing the Date hereof. Given under our Hands and Seals, &c.

Conies. See Game and Hunting.

1 Jac. cap.
13. But by
22 Car. 2.
*Tis treble
Damages,
Commit-
ment for
3 Months.
and to find
Sureties for
Good Be-
haviour.

ENtring wrongfully into a Ground enclosed ; and per 22 & 23 Car. 2. cap. 25. though not enclosed, but which is used for breeding Conies ; and chasing, taking or killing them, shall be committed for three Months, and afterwards pay treble Damages and Costs, to be assessed by Justices before whom convicted, and find Sureties for Good Behaviour for seven Years, or be committed.

Killing or taking them in the Night-time upon Borders of Warrens, shall pay to the Party grieved what the Justice shall think fit before whom convicted, and to the Overseers of the Poor of the Parish where the Offence is committed, not exceeding 10 s. or be sent to the House of Correction, not exceeding a Month.

Conviction must be by Confession, or Oath of one sufficient Witness, within a Month after the Offence, and before one Justice of the Division. 22 & 23 Car. 2. cap. 25.

May appeal to the Sessions, whose Judgment is final.

4 Leon. 7.

A Man who hath only Right of Common, cannot kill Conies which destroy his Common, though he hath no other Remedy ; the Reason formerly was, because the Commoner hath nothing to do with the Land, but to put in his Cattle ; the Property of the Soil is in the Lord, and so long as the Conies are in his own Land, he hath likewise a Property in them, and they may be called *Cuniculos suos* ; but the later Authorities are contrary, viz. That none can say whose Conies they are when they are on a Common, and that they being *fera natura* when they are out of the Warren, the Lord hath no Property in them till he takes them, and therefore the Commoner may kill them, but cannot have an Action on the Case, for that would be to create Multiplicity of Actions.

2 Cro. 195

Cro. Car.
388.

1 Geo.
cap. 3.

Officer or Soldier, who without Leave of the Lord of the Manor, shall take or destroy any Hare, Coney, Pheasant, Partridge, Pidgeon, or other Sort of Fowls, Poultry or Fish, and shall be convicted thereof by the Oath of one or more Witnesses, before one Justice, every Officer shall forfeit 5 l. to the Poor

Conjuration. Conspiracy.

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Poor of the Place, &c. and if Soldier, shall be convicted, the Officer in chief shall pay 20*l.* to be distributed as aforesaid; and if not paid within two Days after Demand, by the Constable or Overseers, he shall forfeit his Commission, which is by the Statute declared to be void.

An Indictment upon the Statute of 22 & 23 Car. 2.

Middl' ff. **J**UR' &c. quod J. O. de H. in Com' pzed' Yeoman 14 die Augusti, Anno Regni, &c. vi a armis, viz. baculis falcistris & aliis armis offensivis I heram Warrenam R. B. apud H. pzed' in Com' pzed' circa horam duodecimam in nocte ejusdem diei fregit & intravit & in eadem libera Warrenia leperariis licistris retibus vocat. Pursnets sine licentia & contra voluntatem pzed' R. B. veniebat & quinquaginta Cuniculos valoris viginti & quinque solidorum de bonis & cecallis ipsius R. B. abtunc & ibid' invent' cepit & asportabit ad grave damnum ipsius R. B. & contra pacem dicti Dom' Regis nunc corzon' & dignitat' suas necnon contra Statut.

Conjuration.

ANY Person convicted to have used Invocation or Conjuration of any Evil Spirit, or to have consulted, &c. any such Spirit, to kill, consume, or lame any Person; they, with their Accessories, are Felons without Benefit of Clergy. 1 Jac. c.12.

So likewise any Person convicted to have, by Witchcraft, Charm, &c. undertaken to tell where Goods lost or stolen may be found, or where they are, shall be committed for a Year without Bail, and shall once in every Quarter of that Year stand in the Pillory.

Conspiracy.

THIS is an Agreement between two or more, falsely and maliciously to indict an innocent Man; who after Acquittal by Verdict, hath two Remedies to punish the Offenders. Moor 562. 783, 815, 816.

(1.) By a Writ of Conspiracy, which is a Civil Action, in which Damages are to be recovered.

(2.) By an Indictment at the Suit of the King.

The Action will not lie, unless the Party is *legitimo modo acquietatus*. Noy 116.

And as to this Matter, there is a very nice Case, viz. Conspiracy, &c. for that they falsely procured him to be indicted, and to be imprisoned, *quousque* before such Judges *legitimo modo fuit acquietatus*, and did not say, *inde acquietatus*: The Court 2 Cro. 230. Yelv. 161.

Conspiracy.

was in some Doubt, because that Word was omitted, but certainly it could not be material; for having set forth that they procured him falsely to be indicted, &c. *quousque* he was acquitted; this could not be intended of any other Matter but that for which he was indicted.

There are four Incidents to this Action;

The Conspiracy } Malicious.
must be } False.
 } Declared by some * Prosecution.
 } Voluntary.

* My Lord
Roll tells
us, That a
false Con-
federacy to
indict an-
other, is
punishable
by Indict-
ment, tho'
nothing is
put in Ure.
Roll. Abr.
2 Part 77.
Vide 2 Lev.
62.

The second Remedy against Offenders of this Nature, is by Indictment at the Suit of the King; and upon Conviction, the Judgment is,

That they shall lose their Free Law, that is, they shall never be of a Jury, nor Witnesses in any Case; shall never appear but by Attorney; their Lands, Chattels and Goods shall be seized into the King's Hands, their Trees cut down, and their Bodies imprisoned. *Staundf. Placit. Coron. 175 b. 3 Inst. 143.*

The Reason of this Judgment is, because the Offenders have conspired the Shedding innocent Blood, and that under a Pretence of Justice, by a Course of Law which is made for the Protection of the Innocent.

But there have been other Judgments given against these Offenders: As for Instance,

Godb. 205. An Information was brought by one *Miller* of *Kent*, against an Attorney and another, for Conspiracy, maliciously to take away his Life, by accusing him for breaking open a Trunk, and taking out Money and a Lease, for which they indicted Mr. *Miller* at the Assizes; it was found *Ignoramus*, the Conspiracy was proved, and the Sentence was, That the Attorney should be degraded, and cast over the Bar; that both should lose their Ears; and be marked in the Face with the Letter C. to stand on the Pillory with Papers of their Offences, to be whipped, and each fined 500*l.* This Sentence was executed on them, *Anno 11 Jac.*

Moor 817. So where two conspired to accuse Sir *Anth. Aspley* for a Murder done 16 Years before. *Cantrell* was to be the Accuser, and Sir *James Creighton* articulated with him, That he should have a sixth Part of Sir *Anthony's* Estate, and that he would beg the whole of the King. *Cantrell* agreed, and procured one *Smith*, who was Servant to Sir *Anthony*, to accuse both his Master and himself for putting Poison into Drink, which the Master commanded him to carry to one *Rice*, which he did, and so poisoned him. For this Fact he caused his Master and himself to be indicted, but afterward discovered the Conspiracy, and *Creighton* was fined 1000*l.* and committed; another of the Defendants was fined 300*l.* and to stand in the Pillory, and was burnt with a hot Iron on both Cheeks with the Letters *F.* and *C.*

Several

Several Journey-men Taylors in *Cambridge*, were indicted for a Conspiracy to raise their Wages, and being found guilty, they mov'd in Arrest of Judgment.

Jf. That the Fact was laid in the Town of *Cambridge*, without setting forth in what County, and it shall never be intended that the Town of *Cambridge* is within the County of *Cambridge*, because this is a Criminal Case, wherein Intendments are never allowed.

Besides, this Indictment ought to conclude *contra formam Statuti*, because by the Statute 7 *Geo. cap. 13.* Journey-men Taylors are prohibited to enter into any Agreement for the Advancement of their Wages.

But adjudged that the Fact being laid within the Town of *Cambridge*, it shall be intended that the Town is within the County, and this in Order to support all inferiour Jurisdiction; and this being an Indictment for a Conspiracy, 'tis not material to conclude it *contra formam Statuti*, because Conspiracy is an Offence at Common Law. *Mich. 1721. The King versus Journey-men Taylors of Cambridge.*

This Offence is not very common, and I can find but few Precedents of any Indictments for it: There is one in my Lord *Coke's* Entries, for conspiring the Death of a Privy Counsellor; which, with a little Variation, may serve for conspiring the Death of a Person of meaner Degree.

Indictment for conspiring the Death of another.

Suffex, *ff.* **J**UR', &c. quod T. A. Deum nre oculis suis non habens sed instigatione diabolica seductus 20 die Maij, Anno Regni, &c. quarto & diversis diebus & vicibus antea & postea apud L. in Com' p'ed' & in diversis alijs locis in eodem Com' Suffex, illicite voluntarie & maliciose procuravit mobit & instigavit J. F. de, &c. ac quam plurimos alios subdit' dict' Domini Regis & cum eisdem adtunc & ibidem conspiravit ad murd'and' H. G. de, &c. Armigerum, contra pacem dicti Dom' Reg' Cozon' & Dignitat' suas. Cok. Ent 173.

Constable.

TIS not material in this Place to enquire, whether the Word or the Office is of *Saxon* or *Norman* Original. 4 Inst. 123.

Some are of Opinion, that upon the Increase of the People, the Sheriff alone could not take sufficient Care of the Peace of the County, but that it was divided into Hundreds, and a High Constable was appointed over each Hundred to preserve the Peace; but 'tis uncertain when this Division began, for Mr. *Selden* differs from the common Opinion of other Writers, who affirm it to be in the Reign of King *Alfred*, and he tells us it was before that Time. But

But notwithstanding this Division, (be it when it will) neither the Sheriff, together with the High Constable, could in After-times take due Care of the Peace in the County and Hundreds over which they presided; and therefore Petty Constables were appointed for that Purpose in each Town, Village and Parish of every Hundred, to be assisting to the High Constables.

'Tis also incertain when this Division began; it seems to me to be very Ancient, and that both High and Petty Constable are Officers at Common Law; that the one was long before the Statute of *Winton*, and the other before the Beginning of the Reign of *Ed. 3.* so that such old Statutes which first mention this Officer, do only recite the Common Law.

He is not named in the Statute, 3 & 4 *W. & M. cap. 10.* about Deer-stealing, but a Person being convicted of that Offence, the Justice, &c. directed a Warrant to the Constable to levy the Penalty, who levied it accordingly, and did not return his Warrant, for which he was indicted, and found guilty; and that Indictment being removed into *B. R.* by *Certiorari*, it was resolv'd that at Common Law the Constables were subordinate Officers to the *Conservators of the Peace*, and so they are now to the Justices, &c. and that where an Officer neglects his Duty, he is indictable for it at Common Law, and in this Case he ought to return his Warrant, or certify what he has done upon it, otherwise the Prosecutor cannot have the Effect of his Prosecution, and that though this Indictment concluded *contra pacem*, that did not hurt, because this was only a Non-feazance.

How and
where cho-
sen.

It may be at the Leet, either by the Steward himself, or by Presentment of the Grand Jury there; but this must be warranted by Custom, and where a Court-Leet is usually kept, and in such Case the Justices of the Peace cannot interpose.

If he is present when chosen, and shall refuse the Office, the Steward may fine him; if absent, the Homage may present his Refusal at the next Court, and then he shall be amerced; also if he is present and accept the Office he may be sworn in the Leet, if absent, he upon Notice given by the Steward must take the Oath before a Justice, but you cannot distrain for the Penalty without a Custom.

Where Neglects or Miscarriages are, either in keeping of such Courts or chusing them, the Justices at their Quarter-Sessions may appoint and swear a High Constable, and this is the usual Course at this Time; but in Case of Refusal, Death, or Removal, one Justice of the Peace may chuse and swear another.

'Tis true, they may be sworn at any other Time by a Warrant from the Sessions, and they may also be chosen out of the Sessions by the greater Number of Justices of a Division: But this is not usual.

He is chosen by the People of the Parish; only in *Wales* two Petty Constables, *Quorum unus*, may by Virtue of the Staute of 34 H. 8. appoint this Officer.

He must be an honest, understanding and able Man, both in Body and Estate, and not of the meaner Sort; and therefore it has been held, that he is not to be chosen by House or by Custom, if not fit to execute the Office.

He is likewise to be resident where chosen, and if he is not thus qualified, two Justices upon Complaint, may appoint another.

But 'tis now ruled, That a Custom for every Inhabitant to serve by Turns is good; for if it happen on a Woman, she may hire one to serve. *Sid.* 355.

Attornies, Clergy-men, Justices of the Peace, Infants, Lawyers, Mad-men, Physicians, poor, old and sick Persons, Who are exempted, who not.

But Tenant in ancient Demesne is not. 1 *Vent.* 344.

Formerly it has been doubted, whether he might make a Deputy, but now it is allowed; but *respondeat superior* for his Miscarriage, unless the Deputy is sworn and allowed by the Court. *Sid.* 335.

Dissenter, chosen Constable, may make a Deputy, *per Statute* 1 *Will. & Mar.*

Justices may bind him over to the Assizes or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was requir'd to take the Oath, and before whom he refused to be sworn, and not *ad Sessionem* generally; otherwise it may be quash'd. 1 *Keb.* 418. 1 *Mod.* 24. 13. *Aleyn* 78. 2 *Roll. Rep.* 78. 2 *Saund.* 291. *Sid.* 272. *Style* 394.

It must be laid in the proper County where the Fact is suppos'd to be done, and if 'tis brought against him for any Thing in the Executing his Office, he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is nonsuited, or discontinue, or a Verdict for the Defendant, he shall have double Costs. 7 *Fac. c. 5.* 21 *Fac. c. 12.*

If a Constable die, or move out of the Parish, two Justices may chuse and swear another, and he is to continue in the Office 'till next Leet or Sessions, and then the Steward or Justices may either approve him; or appoint another, and swear him. This Office is to continue for one Year; and if longer, Justices in their Sessions may discharge him.

The Sessions may remove a High Constable as well as a Petit Constable, for they are best Judges in these Cases.

His Duty is to be considered under these several Heads following, *viz.*

Affrays.
Ale-houses.
Arms.
Bridges.

Clothiers.
Customs.
Deer-stealing.
Dogs, Setting-Dogs.

Escapes.
Excise.
Felons.
Fish.

Forceible

Constable.

Forcible Entry.
Gaming-houses.
Hedge-breaking.
Highways.
Horse-stoned.
Hue and Cry.
Juries.
Labourers, *vide* Ser-
vants.
Malt-Makers.

Measures.
Militia.
Ministers disturbed.
Peace.
Papists.
Physicians.
Plague.
Prisoners.
Rent.

Riots.
Rogues.
Sabbath.
Superfedeas.
Swearing.
Tobacco Planting.
Vagabonds.
Watches.
Warrants.

1. Affrays.

And first, his Duty concerning Affrays, and therein what is to be done to those who fight in his Presence.

Affaulting, Threatning to kill or beat another in his Presence, or whatever is a Breach of the Peace, he may carry the Offender before a Justice of Peace without a Warrant, but if the Fighting is over, he must have a Warrant, and this is to find Sureties for his Good Behaviour.

If the Quarrelling or Fighting is not in his Sight, and he is informed of it, and refuses to go to keep the Peace, he may be presented by the Grand Jury at Sessions, and fined.

He may command such to depart; and if they refuse or make any Resistance, he may justify the Beating of them, may call others to his Assistance, and if either he or they happen to be killed, 'tis Murder.

He may break open the Doors to see the Peace kept.

If any Person shall be wounded in fighting, he may carry the Offender before a Justice of Peace, who may bail or commit, &c.

Most of the Things above-mentioned the Constable may do by Virtue of his Office; for before Justices of Peace were made, he was *Conservator Pacis*, but he could not take Security by Recognizance or Bail, because he was not an Officer on Record: He might put a Man in the Stocks who broke the Peace in his View, but he could not arrest a Man to find Sureties of the Peace upon any Complaint made to him, unless he did actually see the Peace broken. *Owen 105.*

A Man brought a Child about two Months old to the Church, and left it there, designing it should perish; the Constable put him into the Stocks, and kept him there till he agreed to take the Child; and this was held justifiable, it being to prevent a Felony. *Moor 284.*

The Punishment of a Constable for neglecting to obey a Warrant from a Justice of Peace, consists in the Forfeitures following, *viz.*

Ale-house
unlicensed.

If he doth not levy 20 s. to the Use of the Poor upon such who keep unlicensed Ale-houses, which Distress he may sell after three Days; and if no Distress, then if he doth not whip the Offender, one Justice may commit the Constable without Bail

Bail until the Ale-house-keeper is punished, or until the Constable pay 40 s. to the Use of the Poor.

If an Ale-house-keeper sells less than Measure, viz. full Quarts; then if the Constable doth not levy 20 s. he is to forfeit 40 s. to be levied by Warrant from one Justice; and if no Distress, to be committed.

If an Ale-house-man suffer Townsmen to be tippling, and the Constable having a Warrant, doth not levy the 10 s. shall forfeit *ut prius*, &c. If no Distress can be had, he must certify that Default within twenty Days, or forfeits 40 s. *ut prius*.

Upon those convicted of Tippling, he must levy the Penalty of 3 s. 4 d. or if he neglect, having a Warrant for so doing, forfeits 10 s.

Upon those convicted of Drunkenness, he must levy 3 s. for the Poor; if the Party is not able to pay it, he must sit in the Stocks six Hours, &c.

If he pay, or offer to pay ready Money, and is refus'd; a Constable may cause him to be indicted next Sessions, and there he may be fined and committed.

He may take Arms from them who ride or go arm'd in Terrour of the People, and may carry such Persons before a Justice of Peace to find Sureties.

They must assist such Persons who have a Warrant from the Lord Lieutenant or Deputy, to search for Arms, &c. which must be in the Day-time, unless in Towns; and if resisted, may enter with Force.

Where a Common Bridge is in Decay and it cannot be known who or what Lands are to repair it, the Constable and two of the most able Inhabitants in the Parish must assess, and four Justices must allow such Assessment. Bridges.

They must pay Work-folks ready Money, and the Work-folks must perform their Duty in their Occupation, or forfeit double Damages to the Party grieved; and the High Constable of a Hundred may hear and determine Complaints of the Clothiers and Work-folks, and may commit the last till they make Satisfaction for the Damages. Clothiers.

High Constable may search for, and seize Ropes, Winches, &c. used for unlawful Stretching of Clothes, and if resisted, the Party forfeits 10 l.

A Constable must upon Request, assist such Persons who have a Warrant from the Lord Treasurer, Barons of the Exchequer, or Chief Magistrates of Ports, to search for Goods which have not paid Custom; and he may (if within a Month after the Offence) enter into any House in the Day-time, and if resisted, break it open. Customs.

He must be assisting to all Persons appointed by the King to collect or manage his Customs.

Deer-stealers.

They forfeit 20 *l.* being convicted before one Justice, either by Confession, or Oath of one Witness, of Hunting, Taking, Killing, Wounding of Red or Fallow Deer, in any Place enclosed for keeping Deer; and 30 *l.* for every Deer taken, wounded or killed: These Penalties the Constable is to levy by Warrant from the Justice of the Peace by Distress; or may detain an Offender, not exceeding two Days, if he do not presently pay the Money due upon Conviction, till he can make a Return of his Warrant of Distress.

1 Salk. 380.

A Constable was indicted, setting forth that one *N.* was convicted of Dear-stealing upon the Statute 3 & 4 *Will. c. 10.* and that the Defendant being a Constable, the Justice directed his Warrant to him, to levy the Penalty, which he did, but had not returned the Warrant, or made any Certificate thereof; upon Not Guilty pleaded, he was found Guilty, and the Record being removed by *Certiorari*, it was adjudged, that though the Constable is not named in this Statute, yet the Justices may command him to execute the Warrant, because as at common Law a Constable was a subordinate Officer to the Conservators of the Peace, so he is now a proper Officer to the Justices; that where an Officer neglects his Duty incumbent on him either by the Common Law or Statute he is indictable; that the Constable need not return the Warrant it self, because it may be necessary for him to keep it in his own Defence but then he ought to certify what he hath done upon it, otherwise the Prosecutor is at an End of this Prosecution.

He may enter any suspected Place by a Warrant from the Justice of Peace, and carry away Venison, Skins of Deer, Toils, &c. and the Offender before the Justice of the Peace, to give an Account how he came by them.

Dogs, &c.

A Constable may, by Warrant from two Justices, search any suspected Houses of Persons who have no free Warren, or who are not Lords of Manors, or who have not an Inheritance of 40 *l.* or a Freehold of 80 *l. per Annum*, or who is not worth 400 *l.* and keep Dogs or Nets, &c. and may kill and destroy them.

Escapes.

If he suffer a Felon to escape before he is actually in Custody, 'tis a Misdemeanour, for which he may be indicted and fined; but if he was actually taken, and then he voluntarily suffer him to escape, or destroy himself, 'tis Felony in the Constable; but if the Escape is by Negligence, or involuntary, 'tis only finable; but the Place where the Party was taken, and where he escaped, must be alledged in the Indictment.

But he must set forth for what Felony he was taken, and when it was committed. *Cro. Eliz. 752.*

If he discharges any Person taken upon Suspicion of Felony, 'tis justifiable if no Felony was committed, but otherwise he must not discharge him, tho' he knows that the Party is innocent; but it must be done by due Course of Law.

He

He may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him, to prevent Escapes when he is about to carry him before a Justice of Peace, or to Gaol.

Officer of Excise must have a Constable when he enters into Excise, a Brewhouse by Night to gauge Fats or Vessels.

A Constable by a Warrant from Justices, is to levy the Penalties on the Offenders against any Law of Excise, by Distress, &c. and if none, &c. may carry him to Gaol.

Maker or Retailer of Vinegar, Cyder, &c. for Sale, refusing a Gauger to enter in the Night-time with a Constable, forfeits 15 l.

Brewer so refusing, forfeits 20 l.

Excise-man suspecting secret Conveyance of Worts, may upon Request, and in Presence of a Constable, break open a Door in the Day-time, and if opposed, forfeits 20 l. by the 7 & 8 Will. cap. 30.

A Constable is bound *ex Officio*, to endeavour the Taking of Felons, and may raise Men to assist him; he may likewise apprehend upon Suspicion, and upon Complaint or common Fame, may search suspicious Houses.

If a Felon fly, the Constable may seize and make an Inventory of his Goods, and send Hue and Cry after him; that is, he may raise the Town at any Time, and give the next Constable Notice: The Neglect is finable by the Justices.

If upon such Flight he is apprehended in another County, the Felon must be committed where taken, and not where the Fact was done.

Two Justices, *Quorum unus*, are to set a Tax upon every Parish in a Hundred, where Damages are recover'd against any one or more Inhabitants of that Hundred, upon the Statute of Winton; and the Constables of every Parish are to set a Tax upon every Inhabitant of those Parishes where they refuse to contribute, and may levy the same by Distress, &c.

Those who fish in Nets of less Meshes than three Inches and half from Knot to Knot, or other Engine, to destroy the Breed of Fish along the Sea-Coast, or in any Haven or Creek, or within five Miles thereof, forfeits 10 s. to be levied by the Constable by Warrant from one Justice.

They are to search (by like Warrant) in *Shropshire*, *Worcestershire*, and *Gloucestershire* for any unlawful Nets used to take Fish in the *Severn*, and to seize such Nets, and to carry them to the Quarter-Sessions.

If he refuse to assist the Justice in removing the Force, or forcible carrying the Offender to Gaol, he may be committed himself, Entry and fined.

He must once a Month search Houses where unlawful Games are kept, as Tables, Tennis, Bowls, &c. and may commit the Master of the House, and the Gamesters, till they give Sureties

Constable.

ties not to do the like again; if the Constable neglects, he forfeits 40 s. for every Default.

He may by Warrant from one Justice of Peace, enter and search the suspected Houses of any Person not qualified; and if he find any Game there, shall carry the Offender before a Justice of Peace. 4 & 5 W. & M. cap. 23.

Hedge-breakers.

Convicted by Oath of one Witness before a Justice of Peace, and their Procurers and Receivers, knowing the same, must give the Party Satisfaction; if they cannot, then a Justice of Peace must commit them to the Constable, who must whip them for the first Offence; if the Constable neglect, then he may be committed without Bail, until the Offender is whipped. 43 Eliz. cap. 7.

He hath Power to apprehend suspected Persons for carrying Bundles of Wood, &c. and may by Warrant from one Justice of Peace, enter into the Houses of such suspected People; and if they find any, then to take the Offender, and those in whose Houses, &c. the Wood is found, &c. and carry him before a Justice of Peace. 15 Car. 2.

Highways. He must on every *Tuesday* and *Wednesday* in *Easter Week* call together the Inhabitants, and chuse two Surveyors for the next Year; and for his Neglect, may be fined by the Justices in Quarter-Sessions: Which Fine is to be estreated by the Clerk of the Peace, and that shall be a Warrant to the High Constable to levy it; and if no Distress be found, or he do not pay the Fine within twenty Days after Demand, forfeits double so much.

He must likewise appoint six Days between that and *Midsummer*, for amending the Ways, and the next *Sunday* must give Notice of those Days in the Church, under like Pain: This was enjoined by former Statutes.

But now by the Statute of 3 & 4 W. & M. Constables, &c. and Inhabitants, must meet the Day after *Christmas* Day; and the greater Part of them so met, must agree on a sufficient Number of Men who have 10 l. per Ann. or are worth 100 l. or Rent 30 l. per Ann. and if no such, then of the most sufficient Inhabitants; which Number of Lists the Constable must return to the Justices at a Special Sessions, on the third Day of *January* following; and if not held then, must be held within fifteen Days after; and Justices in such Cases must give the Constables ten Days Notice; and then the Justices may, under Hand and Seal, appoint one or more Surveyors for every Parish within that Division, &c. and the Constable must serve Surveyors with the Justices Warrant within six Days after Appointment; and not returning such List as aforesaid, forfeits 20 s. &c.

Horses stoned.

A Constable must assist such who call him to seize stoned Horses put into Commons where Mares are usually kept, which Horses are not (at the Age of two Years) fifteen Hands high; the

the Horses must be brought to the next Pound and measur'd by a Constable in the Presence of three Men ; if he refuse to measure, forfeits 40 s.

In Fen-Grounds the Horses may be but 13 Hands high.

A Constable is to raise Hue and Cry upon Notice, and describing the Felon, and telling him which Way he is gone ; and for this Purpose he may call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable, and he to the next, &c. and in the mean Time to make an Inventory of his Goods in the Presence of his Neighbours : If he refuse to pursue the Offender, he may be indicted, &c. but the Place where he gave Notice must be set forth in the Indictment.

Cro. Eliz. 655.

He was indicted for that a Burglary was committed by Persons unknown, and that J. S. gave him Notice thereof, and required him to make Hue and Cry, which he refused : Exception was taken to the Indictment, because the Prosecutor did not alledge where he gave him Notice ; and this was held a material Exception.

Constables, &c. must every Year at *Michaelmas* Sessions, give in a List of the Names and Places of Habitation within their respective Limits, of all Persons qualified to serve on Juries between the Age of 21 and 70 Years ; and if he neglects, forfeits 5 l. to the King.

The Qualifications are 80 l. *per Ann.* for a Grand Jury-Man, and 10 l. *per Ann.* for a Petty Jury-Man. 7 & 8 W. cap. 32.

A Constable, *ex Officio*, may in Hay or Corn Harvest, set any Labourers, ordinary Tradesman on Work by the Day, being required by those who want Labourers, and put them into the Stocks for two Days and a Night, if they refuse ; and the Constable neglecting his Duty herein, forfeits 40 s.

He is bound to search and view Malt made to be sold, and if it be not steeping and drying three Weeks ; if half a Peck of Dust is not sifted or fanned out of every Quarter ; if it be made of Mow-burnt Barley, or spired, or good and bad mix'd together ; besides the Penalty inflicted, the Constable, with the Advice of one Justice, may sell the same at such Rates as the Justice shall please.

Measures. *Vide* Weights.

They are to levy the Money charg'd upon any Person by the Lord Lieutenant or his Deputies, for the providing Arms for Horse and Foot Soldiers ; and if no Distress is to be found, may by Warrant from the Lord Lieutenant, &c. commit the Offender until he make Satisfaction.

A Constable, *ex Officio*, may apprehend the Offender, and carry him before a Justice of Peace.

Oath. *Vide* Presentment.

Physicians. Constables in London, and within seven Miles, are to be assisting to the President of the College of Physicians, and such who shall have any Authority from him, &c. to put the Laws in Execution concerning the College: The Neglect is a Contempt to the King.

Plague. He may command any Person infected to keep within his House; and if after such Command he wilfully go abroad, having a Sore upon him, 'tis Felony; and if no Sore, he may be punish'd as a Vagabond, and bound to his Good Behaviour for a Year,

If he neglects to levy the Money appointed by Justices to relieve the poor infected, forfeits 10 s. for every Offence.

Popish Recusants. A Constable is to certify to the Quarter-Sessions the Names of Popish Recusants convict, who within twenty Days after they arrive to the Place of their Birth (if they have no certain Abode elsewhere) give in their Names to him; which they are enjoined to do, and the Minister is to enter their Names in a Book for that Purpose.

They must once a Year present to the Quarter-Sessions those who absent themselves for the Space of a Month from Church, and the Names of their Children above nine Years old living with their Parents, and such Servants as they retain; or forfeit 20 s. for every Default. 1 *Jac. cap. 4.*

Carrying Prisoners to Gaol.

He by Warrant from a Justice of Peace may sell the Offender's Goods to defray his Charges, and of those who carry him to Gaol; but such Goods must be apprais'd by some Inhabitants of the Place.

If the Offender hath no Goods, then the Town where he was apprehended must be at the Charge; and the Constable, &c. and three Inhabitants, may impose a Tax on every Inhabitant; which being allow'd by a Justice of Peace, the Constable by Warrant may levy it on those who refuse; and the Distress being apprais'd by four Inhabitants there, may sell it.

If a Constable be sued, he may plead the general Issue, and shall have treble Damages besides Costs, if he recover.

In conveying a Felon either before a Justice or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape.

Presentment.

Before I treat of this, I shall mention his Oath, *viz.*

The Constable's Oath.

YOU shall swear, That you shall well and truly execute the Office of a Constable, or Headborough, for the Town, or for the Parish of H. for the Year ensuing, and until another be sworn in your Room, or until you shall be legally discharged thereof.

This

This Oath is now administred for the Shortness of it, but by the other Oath he was usually sworn to these Particulars, *Viz.*

Affrays to suppress and present.	Peace to keep, &c.
Armed Men to arrest.	Rescues to present.
Barretors to apprehend.	Rioters to suppress and apprehend.
Bloodshed to present.	Rogues to punish.
Drunkenness to present.	Vagabonds.
Felons to apprehend.	Warrants to execute.
Gaming-houses and Gamesters to present.	Watch to keep.
Hue and Cry to see made.	And all other Things relating to his Office, according to his Ability.
Idle Persons punish'd.	
Night-walkers to punish.	

This he is bound to do, but few make true Presentments of these Offences within their Liberties; they make Returns formally, and bring them to a Justice to sign, and carry them to the High Constable, who makes Oath that he had them from the Petty Constable: And they are not alter'd when they signify nothing.

It hath been lately question'd, Why a High Constable should be sworn to a Matter of Form, and not a Petty Constable to the Substance of Return? Which, as a late Author observ'd, ought to be carried to a Justice some Time before the Sessions, to be examin'd to the Truth of every Article.

Few Parishes there are, but what have Inmates and unlawful Cottages; and this must unavoidably fall under their Observation.

A Constable must assist the Party distraining, and swear two Rent. Men to appraise the Goods, and the Overplus, after Debts satisfied, may be left in his Hands.

He is, *ex Officio*, to suppress all Riots, and to commit the Riots. Offenders, and all such who break the Peace.

A Constable is to endeavour to seize Rogues, Vagabonds, &c. Rogues. wandring and begging within their Liberties, or forfeits 10 s. If any Person bring a Rogue to him, he must receive him, and see that he is punish'd, or forfeits 10 s. to be levied by Warrant from two Justices.

He must punish him thus, *viz.* Being assisted by the Minister of the Parish, and one more, he must cause the Vagrant to be stripp'd naked from the Middle upwards, and whipp'd till he bleed; then he must send him to his Place of Birth, and if that is not known, then to the Place of his last Abode for one Year, before Whipping; and if that is not known, then to the Town through which he pass'd last unpunish'd; and if it cannot be known there where he was born or dwelt, then to the House

House of Correction, &c. to be employed in Work, or in Service for a Year.

A Constable, &c. is to give him a Testimonial of the Day and Place of his Whipping, and if he is negligent, he forfeits 10 s. Or such Constable who doth not receive a Rogue, who is to be conveyed from one Town to another till he comes to the Place of his Birth, &c. he forfeits 5 l. or if he receives him, and doth not convey him to the next Constable, the like Penalty. 39 Eliz. cap. 4.

He must levy the Penalty of 3 s. 4 d. by Warrant from one Justice, of such who use unlawful Games, and if he cannot distrain, must put the Offender in the Stocks for three Hours.

Sabbath.

Those who on that Day keep or resort to Bowling, Church-Ale, Dancing, Ringing, or any Sport whatsoever, forfeit 5 s. if above 14 Years old, if under, 12 d. which the Constable must levy by Warrant of one of the Justices of the Peace by Distress; and if no Distress can be taken, then to be put three Hours into the Stocks.

He must likewise levy 6 s. by Warrant on a Butcher, who shall kill or sell Flesh on that Day.

Swearing.

Being convicted thereof, if the Offender is a Servant or Labourer, &c. forfeits 1 s. to the Poor, and every other Person 2 s. and double for the second Offence, and treble for the third, to be levied by Warrant of one Justice and Constable, &c. 6 & 7 W. & M. cap. 11.

Superfedeas.

If a Constable have a Warrant to execute for Sureties of Peace, and afterwards has a *Superfedeas* from the Court of Chancery, or from another Justice, &c. to discharge the Sureties; yet if he will persist to have the Party find Sureties, and he refuse and is detain'd, 'tis false Imprisonment, &c.

Tobacco.

A Constable, &c. upon Information of planting above half a Pole of Tobacco, must within 10 Days destroy it.

Watch.

Constables must cause Night-Watches to be set from *Whitsontide* till *Michaelmas*, from Sun-set to the Rising thereof, with four Men or more, who must be able, and Inhabitants of the Place, and watch by Turns; if they refuse, the Constable may complain to a Justice of Peace, who may bind the Party refusing to Good Behaviour.

Cro. Eliz.
204.

A Constable appointed a Man to watch, and because he refused, he put him in the Stocks: In an Action of false Imprisonment, the Defendant justified as Constable, but did not shew that the Plaintiff was an *Inhabitant of the Town*; for he might be a Stranger, and then he could not appoint him to watch, nor put him in the Stocks for refusing, but must complain to a Justice of Peace.

Warrants
to execute

He must not dispute, but execute them; and if the Justices exceed their Authority, the Constable is excused.

But if the Justice of Peace sends a Warrant to execute where he hath no Authority, or where he is proper Judge, a Constable may be punish'd if he execute it.

So if it is plain that the Warrant is mistaken in the Penalty, or if it command the Constable to do something out of his Precinct.

If the Warrant is directed to the Constable, *by Name*, commanding him to execute it, though he is not compellable to go out of his Parish, yet he may if he will, and shall be justified by the Warrant in so doing; but if it is directed to all Constables *generally*, it shall be taken respectively, and in such Case a Constable cannot execute it out of his Precinct.

He need not shew his Warrant, but may acquaint the Party with the Contents of it.

If he apprehend a Person without a Warrant, and obtain one afterwards, it is false Imprisonment.

If he let the Person go upon his Promise to return and appear before the Justice of Peace, he cannot retake him by Vertue of his first Warrant; but if the Party escaped, he may pursue him, though in another County, and bring him back to the Justice of Peace.

If there are two Persons of one Name, and the same Addition, and the Constable takes a wrong Person, it is no false Imprisonment.

But if the Warrant is against a particular Person by Name, and he apprehends another who is really the Offender, such Taking is wrongful, and the Party may have his Action of false Imprisonment, but will recover but little Damages.

A Man may be bound to his Good Behaviour for any Abuse or Contempt to the Justices Warrant, and may be indicted and fined for it.

In Cases of Treason, Felony, or Breach of the Peace, a Constable may by Warrant from a Justice of Peace break open an House to take the Criminal; but first he ought to require the Opening of the Doors, and to acquaint the Person for what Purpose he came thither.

If he is indicted for not executing of a Warrant, you must shew some particular Act of Disobedience, and not generally, that he did not execute it. *Trim. 20 Car. B. R.*

He may justify the Detaining an Offender for a Day, by the Command of a Justice of Peace without a Warrant, not having an Opportunity then to examine him. *Moor 408.*

A Warrant or Superfedeas for discharging of a Petty Constable, and to swear another.

GEorg' Dei, &c. Vicecomiti Suffex' necnon capitali Constabulario Bape de Lewes & eorum cuilibet Salutem. Quia R. N. & R. W. Constabularios Ville de H. pro certis causis nos moventibus ab Officiis suis exonerari fecimus, ideo vobis & cuilibet vestrum mandamus quod R. P. & R. O. jurari faciatis bene & fideliter erequi omnia & singula eidem officio incumbencia prout ipsi nobis inde respondere voluerint dictisque R. N. & R. W. similiter injungentes quod ipsi de officio predict' ulterius exercendo nullatenus se intromittant quousque aliud mandatum de nobis habuerint & quicquid in premissis faceritis Justiciariis nostris ad pacem nostram in dict' Comitatu conserband' assignat' ad proximam Generalem Sessionem pacis apud L. in Com' predict' tenendam certificetis, hoc preceptum nostrum tunc & ibidem remittentes. Teste R. B. uno Justiciarioz' nostrorum pred' 1 die Junii, Anno, &c.

This Warrant above-written, made by the Justice in the King's Name, and the Name of the Sheriff, is now disused, and the Justice may make the Warrant in his own Name, as followeth, viz.

A Warrant to remove a Constable, continuing in his Office above a Year.

To R. N. of H. Yeoman.

13 & 14
Car. 2.
cap. 12.
Two Ju-
stices.

Suffex, ff. **W**Hereas it appeareth to us, B. R. and W. N. two of his Majesty's Justices of the Peace for the County aforesaid, That R. N. hath lately executed the Office of a Headborough, in and for the Parish of H. aforesaid, during the Space of one whole Year, and doth still continue to execute the said Office after the Expiration of the said Year, contrary to the Form of the Statute in that Case made and provided: Now we do hereby, according to the Power and Authority given unto us, concerning the Premises, discharge you the said R. N. from the Office of Constable in and for the said Parish of H. requiring you from henceforth to forbear the Execution thereof in any Matter or Thing whatsoever, until further Order shall be taken therein. Given under our Hands and Seals, &c.

A War-

A Warrant for a new Constable to appear and be sworn.

To W. V. of H. Yeoman.

Suffex, ff. **W** Hereas R. N. hath lately been discharged by us ^{13 & 14}
 R. B. and W. N. two of his Majesty's Justices, ^{Car. 2.}
 &c. for that he continued to execute the Office of a Constable for the ^{cap. 12.}
 Parish of H. aforesaid, above the Space of one whole Year: Or, ^{Two Ju-}
 Whereas, R. N. late Constable of the Parish of H. is departed this ^{stices.}
 Life, (or) is removed with himself and Family out of the Parish of H. ^{if the Con-}
 within the Year in which he should have served in the Office of Con- ^{stable die,}
 stable; (or) is, by Reason of his Age and Inability, not capable to ex- ^{or remove}
 ecute, &c. the said Office: These are therefore to require you, and ^{into an-}
 in his Majesty's Name to charge and command you, personally to come ^{other Pa-}
 before us, or before some other of his Majesty's Justices of the Peace ^{rish, then}
 for the said County, to take the Oath of a Constable, to serve his Ma- ^{say,}
 jesty within the Town or Parish of H. And hereof fail not. Given
 under our Hands and Seals, &c.

By the Statute of 3 Jac. cap. 10. An Offender who is to be carried to Gaol must bear his own Charges, and of those who convey him; if he refuse, then the Constable, by Warrant from one Justice, may sell his Goods, &c.

A Warrant to levy upon the Offender's Goods, the Charges of carrying him to Gaol.

To the Constable of the Parish of H. in the County of Suffex.

Suffex, ff. **W** Hereas it appeareth to me, upon the Complaint of ^{3 Jac. c. 10.}
 the Parishioners of H. in the County aforesaid, That ^{One Ju-}
 the Charges of J. O. and of those who conveyed him to Gaol, being sent ^{stices.}
 thither by my Warrant upon Suspicion of Felony, did amount to 15 s.
 and that the said J. O. hath Goods and Chattels within your Township
 sufficient to defray the said Expence: These are therefore in his Ma-
 jesty's Name, to command you to levy the said Sum of 15 s. by Distress
 and Sale of the Goods of the said J. O. within your Parish, causing
 the same before the Sale thereof to be appraised by some of the Neigh-
 bours there, and that you pay the said Sum unto the Parishioners of L. * ^{Viz.}
 * in your said County. And hereof fail not, &c. ^{where he}
 was taken.

If the Offender hath no Goods, &c. then the Constable and Churchwardens, and three of the Inhabitants, and if there are no such Officers, then four of the principal Inhabitants, may tax all the Rest; which Tax must be allowed by one Justice: And if they refuse, then by a Warrant from one Justice the Officer may levy it

The

The Form of the Rate or Tax.

A Rate or Tax made by us whose Names are hereunto subscribed, the 30th Day of June 1724, being the Constable, Churchwardens, and three other Inhabitants of the Parish of L. in the County of S. where J. O. was lately taken and conveyed to the common Gaol of the said County upon Suspicion of Felony; which said Tax is made by us, and charged upon the Inhabitants of the said Parish, to defray the Charges for carrying the said J. O. to Gaol, he having no Goods to satisfy the same.

	l.	s.	d.
Imprimis, A. B. ———	0	1	3
C. D. ———	0	0	9
E. F. ———	0	2	0
G. H. ———	0	1	3

I R. B. Esq; one of his Majesty's Justices of the Peace of the County of Suffex, do allow the Tax above-written. Witness my Hand, this 30th Day of June, 1724.

R. W. Constable.
 A. B. } Churchwardens.
 C. D. }
 E. F. }
 G. H. } Inhabitants of H.
 R. B. } J. K. }

If they refuse to pay the several Sums at which they are taxed, then levy it by this Warrant, &c.

A Warrant to levy the Tax upon those who refuse to pay, &c.

To the Constable, Tything-Man, &c. of the Parish of H. in the County of Suffex, &c.

4 Jac. c. 10 Suffex ff.
One Justice.

W Hereas the Persons whose Names are under-written, have been lawfully taxed in the several Sums herein mentioned, and which are added to their respective Names, in Order to satisfy the Charge expended by A. B. and those whom he called to his Assistance to carry J. O. to Gaol; which said Persons have refused to pay the same, contrary to the Form of the Statute in that Case made and provided: These are therefore to require you, or either of you, to levy the said Sums upon the several Goods and Chattels of the respective Persons so taxed as aforesaid, and refusing to pay the same, returning the Overplus to them respectively. Given under our Hands and Seals, &c.

A. B.,

Constable.

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
A.B. ———	0	1	0
C.D. ———	0	0	9
E.F. ———	0	2	0
G.H. ———	0	1	3, &c.

By this Statute, the Constables and other Inhabitants of the Parish may tax all Persons chargeable by the 42 Eliz. c. 2. to re-imburse their Charges for conveying Vagabonds, &c. to the House of Correction, and for other Parish Charges.

Now the Persons to be taxed by the Act are, every Inhabitant of the Parish, the Parson or the Vicar, and every Occupier of Houses, Lands, Tithes and Woods; but the Land-lord is not to be taxed, in respect of his Rent.

The Tax upon Land is to be made according to the yearly Rent, but no Man is to be taxed for the Stock he hath upon the Lands; but if a Clothier or Merchant, having a considerable Stock in Trade or Merchandize, and occupy Lands, they may be taxed for both.

The Taxation of Personal Estates must be in the Parish to which it is taxed, and after the Rate of 5 *l.* for every Hundred.

This Tax or Rate must be confirmed under the Hands and Seals of two Justices of the Peace, and then if the Persons taxed refuse to pay, the Constable, by Warrant from the Justices, may levy it.

First, If the Inhabitants refuse to make a Tax, two Justices may make a Warrant, requiring them to do it. The Form of which Warrant may be thus:

A Warrant, enabling the Parishioners to make a Tax to re-imburse the Constable.

To A. B. D. E. G. H. K. L. and other the Inhabitants of the Parish of H. in the County of *Suffex*.

Suffex, ff. **W**Hereas we are inform'd by W. W. Constable of your said Parish, That he hath expended several Sums of Money in the necessary Execution of his Office, and that he hath not been re-imburshed the same, but hath desired our Direction and Assistance for that Purpose: These are therefore in his Majesty's Name to require and command you, or the greater Number of you, who shall be met together upon Notice of this Precept, to examine the Accounts of the said Constable relating to the Premises; and that if you shall find his said Expences to be necessary in the Execution of his said Office, that then you forthwith do tax every Inhabitant within your Parish, in several and proportionable Sums, amounting to so much as will re-imburse him. And we do likewise hereby give Authority to the said Constable to demand and collect the respective Sums so assessed; and

Constable.

and that if any Person so taxed shall refuse to pay the same, that then the said Constable do return unto us, or to some other Justice of this County, the Names of the Persons refusing. Given under our Hands, &c.

The Names of the Persons refusing to pay the Tax being returned by the Constable to the Justices of the Peace, then they may issue forth this Warrant, to appear, and shew Cause why they refuse to pay, &c.

To the Constable, Tything-man, and other Officers of the Parish of H. in the County of Sussex, &c.

Sussex, ff. **T**Hese are in his Majesty's Name to command you, That you, or some or one of you, do give Notice unto A. B. R. W. H. C. &c. to appear before us at the House of J. T. Innholder, called or known by the Sign of the Star, in L. in the said County, on Monday the second Day of this Instant June, at 10 of the Clock in the Morning of the same Day, to shew Cause why they severally refuse to pay the respective Sums of Money assess'd upon them, for and towards the Re-imbursement of the Charges which W. W. Constable of the Parish of H. aforesaid, hath sustained in the necessary Execution of his said Office. And hereof fail not. Given under our Hands and Seals, &c.

If they appear, then two Justices may bind them over to appear at the Sessions, if they think fit so to do: The Recognizance is as followeth, in Parchment.

Sussex, ff. **M**emozandum quod secundo die Mail, Anno, &c. venerunt coram R. B. & W. N. Armigeris, Justiciariis dicti Domini Regis ad pacem in Com' pzed' confer' hand' assign' A. B. de P. in Com' pzed' Yeoman, & D. E. de C. in Com' pzed' Husbandman, & recognoverunt se separatim deberi dicto Dom' Reg' in quinq; libris bone & legalis monete Angl' de bonis & catallis terris & tenementis suis fieri & levari ad opus dicti Dom' Reg' si respective defecerint in Conditione infrascript'.

THE Condition of this Recognizance is such, That whereas the above-bounden A. B. and D. E. have severally refused to pay to W. W. late Constable of the Parish of H. in the County aforesaid, such Sums which have been severally and respectively assessed upon them, in order to re-imburse the said Constable, what hath been necessarily expended by him in the Execution of the said Office. If therefore the said A. B. and D. E. shall personally appear at the next General Quarter-Sessions of the Peace, to be held for the said County at L. in the

the County aforesaid, and shall then do and receive what shall be enjoined by the said Court relating to Premises; then this Recognizance shall be void, or else to stand in full Force and Vertue.

*Capt' & cogn' secundo die Maii,
Anno supradicto coram nobis,*

R. B. W. N.

When they appear at the Sessions, they may be presented and indicted there, setting forth, That the Assessment was reasonable; and it must appear to be for a Constable's Rate, and conclude, *Contra formam Statuti.*

If they refuse to appear upon Notice, then the Justices may issue forth this Warrant :

To the Constable and Tithingman of, &c.

Sussex, ss. **W** Hereas we are informed, That A. B. and D. E. of your Parish, Yeomen, had Notice given unto them respectively to appear before us, at a certain Time and Place mentioned in a former Warrant for that Purpose, to shew Cause why they did not pay unto W. W. late Constable of the Parish of H. aforesaid, the respective Sums assessed upon them, towards the Re-imbursment of his necessary Charges in the Execution of his said Office : And whereas they have refused or neglected to appear according to the Purport of the said Warrant, or to pay the said Money : These are therefore in his Majesty's Name to command you to bring the aforesaid A. B. and D. E. before us, or some other Justice of the Peace for this County, at the House of J. T. in L. upon Tuesday next, by Ten of the Clock in the Forenoon of the same Day, to answer the Premises. Given under our Hands and Seals, &c.

If they appear before the Justices, and they do not think it expedient to bind them over to the Sessions, then they may grant a Warrant to distrain, &c. for the Charges, as followeth.

To the Constable and Tithingman of the Parish of H. in the County of Sussex.

Sussex, ss. **W** Hereas it appeareth unto us, upon the Complaint of J. D. late Constable of the said Parish, That A. B. and D. E. Inhabitants of the aforesaid Parish, have refused to pay the Sums herein after written, That is to say, the said A. B. hath refused to pay 2 s. and the said D. E. 2 s. 6 d. being severally assessed upon them towards the Re-imbursing such Charges which the said J. D. hath necessarily expended in the Execution of his said Office : These are therefore to require you to levy the said respective Sums so assessed upon the said Persons, by Distress and Sale of their re-
P
spective

Constable.

specific Goods, rendering to them the Overplus, if any shall be. Given under our Hands and Seals, &c.

If the Constable doth not cause Rogues and Vagabonds to be whipp'd, then the Justice may send a Warrant to levy the Penalty of 10 s. for every Default.

To the High Constable of the Rape of L. or to his Deputy.

39 Eliz c.4. Suffex, ff. Two Justices. If begging then the Constable tortois 30 s. not punishing him. 7 Jac. cap. 4.

W Hereas A. B. a Vagabond, was lately seen wandering in the Parish of H. in the said County, and J. O. being then Constable of the said Parish, having Notice thereof, did neglect to call to him the Assistance of the Minister, and one other Inhabitant thereof, to appoint the said A. B. to be stripped and openly whipped, pursuant to the Statute in that Case made and provided: for which Default he hath forfeited the Sum of Ten Shillings: These are therefore in his Majesty's Name to require you, upon Receipt hereof, to demand the said Ten Shillings of the said J. O. and if he refuse to pay the same, that then you forthwith levy it by Distress and Sale of his Goods and Chattels, returning to him the Overplus; and for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

The Confession of the Party, or Proof by Two Witnesses before Two Justices, is a Conviction. The Ten Shillings must go to the Poor of the Parish, or to the Maintenance of the House of Correction, as the Justice of the Peace shall think fit.

A Warrant to make a privy Search.

To the Constable and Tithingman of the Parish of H. &c.

7 Jac. cap. 4.

T Hese are to authorize and require you to call to your Assistance some sufficient Men of your Neighbourhood, and that in one Night, before the 10th Day of this Instant May, you make a privy Search in all suspicious Places within your Precinct, to find out and apprehend Rogues, Vagabonds, and other suspicious Persons there; and that you cause such as you shall so find, to be brought before us R. B. and W. N. two of his Majesty's Justices of the Peace for the said County, at the House of J. O. in L. in the County aforesaid, on Thursday the 10th of May aforesaid, to be examined, and punished as we shall see Cause, and that you appear there likewise to give an Account touching the Premises. Given under our Hands and Seals the 5th Day of May, &c.

R. B. W. N.

The Justices must meet twice a Year to execute this Statute, and the Warrant above-written must be sent to the Constable Five Days before their Meeting; and if the Constable shall not appear at that Meeting, or not give an Account upon

Indictments against Constables.

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on Oath (when he doth appear) what Rogues he hath taken ; or if he doth not convey to the House of Correction such of them as the Justices of Peace shall commit, he may be fined any Sum under 40 s. and a Warrant as followeth :

To the High Constable of the Rape of L. in the County of Suffex.

Suffex, ff. **W** Hereas at our Meeting at L. on the 10th Day of 7 Jac. c. 4. May last, for the better Execution of the Statutes ^{Two Ju-} concerning the Punishment of Rogues and Vagabonds, and other disorderly Persons, made in the Reign of the late King James the First, J. O. the Constable of the Parish of H. was fined in the Sum of 20 s. for not * appearing at the said Meeting before us, pursuant to a former Warrant to him directed for that Purpose: These are therefore in his Majesty's Name to require you forthwith, upon Receipt hereof, to demand of the said J. O. the aforesaid Fine ; and if he shall refuse to pay the same, that then you levy the said Sum of 20 s. by Distress and Sale of his Goods and Chattels, rendering to him the Overplus ; and for your so doing, this shall be your Warrant. Given, &c.

* Or for any of the Causes above mentioned.

R. B. W. N:

Indictments against Constables.

Being present at an Affray, and refusing to keep the Peace.

JUR', &c. quod die, &c. & Anno, &c. apud H. in Com' S. Fine and magna Affraia & Perturbatio Pacis facta fuit per J. O. Imprisonment. T. B. & multos alios malefactores, & pacis Domini Regis nunc perturbatores, & quod T. B. de H. pzed' in Com' pzed' Yeoman, adtunc Constabularius Ville de H. pzed' die, Anno, & Loco supradictis pzfens fuit ad Affraiam pzed' (or notitiam habuit, as the Case requires) & non conatus fuit ad pacificand' pzed' Affraiam, & ad pacem dicti Domini Regis conserband' nec ad arrestand' pzed' J. O. T. B. & alios perturbatores pacis, sed debet' executionem Officii sui pzed' in hac parte totaliter neglexit in magnum contemptum dicti Domini Regis, ac contra pacem, &c.

For not apprehending of a Felon.

Suffex, ff. **J**UR', &c. quod J. S. de H. in Com' pzed' La- Fine and bourer, die, &c. Anno, &c. apud H. pzed' in Imprisonment. Com' pzed' unam vaccam de bonis & catallis ejusdam G. E. felonice cepit & abduxit. Cumque etiam pzed' G. E.

Indictments against Constables.

G. E. die, &c. Anno, &c. apud L. in Com' pzed' notitiam dedit J. O. de H. pzed' Yeoman, adtunc Constabulario Wille de H. pzed' quod' pzed' J. S. feloniam pzed' modo & forma pzed' fecisset & perpetrasset, & quod idem J. S. adtunc fuit in pzed' Wille de H. Et pzed' G. E. adtunc & ibid' requisivit pzedict' Constabularium arrestare pzedict' J. S. pzo feloniam pzed' pzedictus tamen J. O. adtunc existens Constabularius ejusdem Wille de H. die, &c. Anno, &c. apud H. pzed' recusavit & neglexit arrestare pzedict' J. S. pzo feloniam pzed' in contemptum dict' Dom' Regis, & contra debitum officii sui pzed' & contra pacem, &c.

The like Indictment may be against a Constable for refusing to search for stoln Goods.

For refusing to execute the Justice's Warrant.

The Nature
and Tenor
of the War-
rant must
be set forth
or 'tis
naught.
1 Vent. 305.
* For if the
Tenor of
the War-
rant is not
set forth,
the Indict-
ment will
be quash'd,
1 Vent. 305.
Fine and
Imprison-
ment.

Suffex, ff. **J**UR', &c. quod cum R. B. Armiger, unus Ju-
sticiarioz Dom' Reg' nunc' ad pacem in Com'
S. conserband' assign' per pzeceptum suum manu
& sigillis suis propriis signat' & sigillat' dat' primo die Julii,
&c. Ann' &c. omnibus & singulis Constabulariis & aliis Offi-
ciariis dict' Dom' Reg' Com' S. pzed' direct' mandabit eisdem
Constabulariis & Officiariis & cuilibet eorum quod caperent
aut eorum aliquis caperet J. O. (Here recite the Warrant,
which if it be to find Sureties. &c.) ad inveniend' Securita-
tem Pacis erga dict' Dom' Reg' & cunctum populum suum &
precipue erga R. N. quod quidem pzeceptum postea scilicet die,
&c. Anno, &c. apud H. in Com' pzed' deliberat' fuit J. O.
adtunc Constabulario de H. pzed' in forma juris erequend' pzed'
tamen J. O. debitum suum in hac parte parvi pendens a pzed'
primo die Julii Anno supradicto, usque diem captionis hujus
inquisitionis apud Parochiam pzed' in Com' pzed' in executione
Officii sui circa pzecepta remissa & negligenter se habuit, &
executionem pzecept' pzed' per tempus pzed' totaliter neglexit
& contemptuose recusabit contra debitum Officii sui in hac parte
in Contemptum dict' Dom' Reg' nunc, & Legum suarum ad
magnam retardationem Justitie, & contra Pacem, &c.

.. For not raising Hue and Cry.

Fine and
Imprison-
ment.

JUR', &c. quod die, &c. Anno, &c. apud H. in Com' S.
quidam Malefactores ignoti in quendam R. N. Yeoman, vi
& armis insultum fecerunt & quinque libras in pecuniis
numeratis de denariis ipsius R. N. propriis ibidem inbent' fe-
lonice ceperunt & asportaverunt super quo pzed' R. N. instans
ter eodem die & anno supradictis venit ad villam de B. in Com'
pzed' & tunc & ibidem notitiam dedit cuidam J. O. Constabu-
lario

lario ville de B. pzed' adtunc existen' quod pzed' Malefactores feloniam pzed' modo & forma pzed' perpetrassent & adtunc & ibidem requisivit pzed' J. O. hutesium & clamorem vers. pzed' Malefactores recenter lebare, & quod daret in mandatis inhabitantibus Ville de B. pzed' ad pzosequend' hujusmodi hutesium & clamorem prout de jure & per legem terre pzosequi debeant pzed' tamen J. O. debitam executionem Officii sui po' in hac parte minime curans hujusmodi hutesium & clamorem non le-
babit nec mandabit inhabitantibus pzed' nec eorum alicui re-
center pzosequi hujusmodi hutesium & clamorem, sed ad hoc fa-
ciend' tunc & ibidem totaliter recusabit & neglexit in malum
exemplum aliorum Dom' Reg' subdito', & contra pacem dict'
Dom' Reg' nunc coronam & dignitatem suas, & contra formam
Statuti in hujusmodi casu edit' & pzovis.

Against those who refuse to follow the Hue and Cry,
being commanded by the Constable.

JUR', &c. (as in the former Precedent to the Word lebare,
then write thus,) Et super hoc pzed' J. O. die & Anno su-
pzd'ictis apud B. pzed' versus pzed' Malefactores hute-
sium & clamorem lebabit, prout de jure debuit & adtunc & ibi-
dem mandabit & appunctuabit T. P. de B. pzed' Yeoman; &
G. E. de eodem Agricolam hutesium & clamorem pzed' pzosequi
pzed' tamen T. P. & G. E. hutesium & clamorem pzed' pzosequi
apud B. pzed' die & anno supzd'ictis omnino recusaber' & neg-
lexerunt in contemptum dict' Dom' Reg' & contra pacem
suam, &c.

For an Escape.

JUR', &c. quod cum quidam J. O. nuper de H. in Com' po'
Agricola pro furatione Equi R. B. capt' & arrestat' fuit &
postea scilicet 30 die Aprilis, Anno, &c. apud H. pzed' per
H. P. Armig' unum Justiciar' dict' Dom' Reg' ad Pacem in
Com' pzed' conserband' assign' commissus fuit in custodiam
R. N. adtunc Constabular' Ville de H. pzed' ad Gaolam in
Com' pzed' conducend' & quod pzed' R. N. adtunc & ibidem
pzed' J. O. in custodia sua habuit pro feloniam pzed' & postea
pzed' 30 die Aprilis, Anno supzd'icto apud H. pzed' in Com'
pzed' ipsum J. O. a custodia ipsius R. N. voluntarie & felonice
ad largum ire permisit contra Pacem dict' Dom' Reg' Coron'
& Dignitatem suas.

Against those who refuse to assist him to apprehend a Felon.

Fine and
Imprison-
ment.

JUR' (as in the Precedent for not apprehending a Felon to the Word addurit) Cumque etiam J. Q. Constabularius Mille de H. pzed die, &c. anno, &c. apud H. pzed' mandabit & requisivit T. P. de H. pzed' & C. B. de eodem Yeoman, ad auxiliand' ipsum J. Q. adtunc Constabular' de H. pzed' existens pzed' (the Felon) pzo feloniam pzed' arrestare & capere pzed' tamen T. P. & G. E. die & anno supradictis apud H. pzed' hoc facere omnino recusaver' & quilibet eorum recusabit in contemptum Dom' Reg' nunc & contra pacem, &c.

The like may be for refusing to assist a Constable to convey Prisoners to the Gaol, or to bring them before a Justice of the Peace, &c.

For Negligence in his Office.

JUR', &c. quod R. K. de H. in Com' pzed' Yeoman, 30 die Aprilis Anno, &c. Constabularius Mille de H. in Com' pzed' adtunc existens apud H. pzed' in Com' pzed' negligenter in negotiis dict' Dom' Reg' ad Officium suum spectan' se gessit ac diversa pzecepta & mandat' Justiciar' dict' Dom' Reg' ad Pacem in Com' pzed' conservand' necnon ad diversas felonias transgression' & alia malefacta infra Com' pzed' perpetrat' audiend' & terminand' assignat' & ei direct' ad erequend' perimplere & erequi neglexit contra Pacem, &c.

Cozn. Vide Transportation and Hedge-breaking.

Coroner.

Who ought
to be a Co-
roner, and
who not.

BY the Statute of W. 1. cap. 10. they were to be Knights; that is, they were to be Freeholders, and Men of Estates, sufficient to qualify them for this Office; for being chosen by the Freeholders of the County, 'tis they must answer the Fines, and other Duties imposed on the Coroners in Matters relating to their Office, if they are not of Ability to do it themselves.

Godb. 105.
F.N.B. 163.
contra.

And therefore if he hath not sufficient Lands within the Hundred, a Writ may issue to chuse another; for in such Case he ceases to be a Coroner, and need not to be discharged formally by a Writ.

They

They must be Men who *melius sciunt, ac possunt Officio intendere*; and therefore a blind, deaf, lame or sick Man, or who is *perpetuo languidus*, is not fit for this Office, and may be removed if chosen.

By Vertue of a Writ *de Coronatore eligendo*, directed to the Sheriff, he is to be chosen by the Freeholders of the County, and the Sheriff after the Day of Election is to certify it, and the Name of the Person chosen, &c. F. N. B. 163. How chosen, and how many in a County.

He is likewise to administer the Oath of his Office to him; as to the Number 'tis uncertain, but in most Counties there are generally four Coroners.

And because he is elected by the Freeholders, his Office is not determined by the Demise of the King. 1 Levinz. 120.

He is to inquire *super visum Corporis*, how the Person was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed. His Office in relation to the Dead, and the Witnesses.

If the Body cannot be found, then he has no Authority; but in such Cases the Matter may be * presented to the Justices in their Quarter-Sessions, and there found by the Jury; and this will intitle the King to a Forfeiture of the Goods. * 2 Levinz. 14 L. 'Tis traversable?

1 Roll. Rep. 217. Noy 87. Poph. 209.

He must take the Depositions of Witnesses in Writing, attested under their Hands, and may bind them over to the next Gaol-delivery to give Evidence, &c.

If the Jury impanelled by him is sworn, and the Witnesses not ready, he may then adjourn them, and bind them by Recognizance to appear again.

When he hath Notice given to view the Body, he must make a Precept directed to the Constable where it lieth, to summon Twenty-four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute such Things as shall be given to them in Charge.

If the Body is buried before he comes, the Vill must be amerced, and he may dig it up again; the Vill may be also amerced for neglecting to send for him, so that the Body is putrified to the Annoyance of the People.

He who buries a dead Body, dying of a violent Death, before the Coroner's Inquest have sat upon it, is *indictable*; this was the Opinion of Holt, Chief Justice.

'Tis true, he may cause the dead Body to be digged up again soon after 'tis buried; but not at a great Distance of Time; tho' it was so done in one Barkley's Case, but not without Leave of the Court. Sid. 101.

He may find any Nuisance which occasioned the Death of a Man; as, that a Bridge is in Decay, and by Reason of a Breach, the Person fell in and was drowned, and the Town shall be amerced. Aleyn. 52.

He is a judicial Officer, and therefore cannot make a Deputy. Deputy.
ty; besides, by the Statute called † *Officium Coronatoris*, he is † Ed. 1; enjoined

enjoined *Statim accedere ad occisos*, which implies, that he ought to see the dead Body; and an Inquisition otherwise taken is void. *Staund. Pl. Coron.* 51.

His Fees.

He being an Officer at the Common Law for the Administration of Justice, was to have no Fee for executing his Office; but by the Statute of 3 H. 7. he is impowered, upon View of the Body, to take 13 s. 4 d. of the Goods of the Slayer; if he has none, and is fled, then he may amerce the Town for suffering the Criminal to escape, and take that Fee out of the Amercement; but he cannot demand any Fee upon the View of a Person killed by Misfortune. 2 *Inst.* 176.

How to be punished.

If he doth not come, having Notice of the Death of any Person, he may be fined and imprisoned by the Justices.

For not binding over Witnesses to the next Gaol-delivery; for not certifying his Recognizances, and the Evidence and Inquisition taken before him, the Justices may fine him.

Inquisition, and Matters relating to it.

He is to take an Inquisition upon Flight of the Felon, to intitle the King to a Forfeiture. 5 *Rep.* 109. B.

But this must be within his proper Jurisdiction in the County; for if any Body be killed within the Verge of the King's Household, the Coroner there hath an exempt Power. 4 *Rep.* 45.

1 Vent. 182.

If there is any Practice with him to suppress the Evidence for the King, B. R. may set aside the Inquisition upon a *Male se gessit*; and if he omit, or neglect to enquire, B. R. as supreme Coroner may do it, or appoint Commissioners; but then it must be *super visum Corporis*, if done by Commissioners.

He ought to deliver the Inquisition at the next Gaol-delivery, or to certify to B. R. where the Chief Justice is the supreme Coroner; if he refuseth, he may be discharged of his Office, and fined by the Justices.

And therefore, where a Coroner did not return his Inquisition, it being found Murder, and the same Person being indicted at the next Gaol-delivery, and the Jury found the Bill for Manslaughter, the Parry came in and confessed the Indictment, and was bailed, and afterwards pleaded his Pardon, which was allowed; yet the Court made him plead to an Indictment upon the Coroner's Inquest, which he did, viz. *Auterfoits Con- vict*; and for this Neglect the Coroner was fined.

1 Salk. 190.

Where a Coroner's Inquisition was quashed, he must make a new one *super visum Corporis*; but if he misbehaves himself, and a *melius inquirendum* is granted, the Inquisition must be taken by the Sheriff, or Commissioners upon *Affidavits*; because none but a Coroner can take Inquisition *super visum Corporis*; and he is not to be trusted again.

An Inquisition was taken *super visum Corporis*, That C. having not the fear of God, &c. *voluntarie Felonice & ut Felo de se cum cultro pretii, &c. quem in manu sua dextra tenuit jugulum suum secuit & se ipsum occidit*; it was objected, that it should have been *Murdravit*, 'tis true the Word is necessary in an Indictment for

Murder,

Murder, because there are degrees in killing another, as *Murder, Manlaughter*; but there are none in killing one's self; besides that Word is necessary in an Indictment; because Clergy is excluded; but 'tis not necessary in an Inquisition. However this was quashed, because the *Wound was not described*, and it was not alledged that it was *mortal*, and 'tis not said that he *died of the Wound*, the Body after it had been buried was taken up again; adjudg'd a Misdemeanor in the Coroner.

He may find any *Nusance* which occasioned the Death, &c. Aleyn 51. As if one riding over a Bridge, fell into the River, and was drowned; the Bridge being broken, or out of Repair, the Coroner may find it; and in such Case the Town shall be amerced; but it must likewise be found, that the Town is bound to repair it.

The Vill shall be amerced, if the Coroner doth not take an Inquisition *super visum Corporis*, because it shall be intended they did not give him Notice.

An Information was brought by the Master of the Crown-Office against the Debtor of a *Felo de se*, the Money being by that Means forfeited to the King; if the Substance of the Inquisition be not set forth in the Information, 'tis void. 2 Saund. 27.

A *Melius inquirend'* is never granted after an Inquisition *super visum Corporis* is filed, unless it is quashed upon Oath made of *Melius inquirend'*. Misdemeanor in the Coroner or Jury; as that they did not go according to their Evidence. 1 Mod. 82. 3 Md. 80. 238.

And in some Cases it may go to the Sheriff; as if the Coroner *super visum Corporis* find, that the Man *fortuito* fell into a Pit, &c. yet there may go a *Melius inquirend'* to the Sheriff, to enquire of the Death, &c. and what Goods and Chattels he had at that Time.

By the Statute of 4 Ed. 1. the Inquisition should be taken *super sacram' &c. hominum Villarum prox' adjacen.* but it was *super sacram' &c. proborum & legalium hominum de Parochia, &c.* yet it was held good. Sid. 204. Latch 166. 1 Vent. 182. Cro. Eliz. 371.

Matters of Form may be amended, as *seipsum felonice submersus fuit*; it should be *jecit seipsum in aquam, & ibidem seipsum merfit.* Sid. 259.

If he return *fugam fecit*, 'tis not traversable; but if he find the Person *Felo de se*, it may be traversed. 2 Levinz 152. 1 of a Pro. cels. Vent. 178, 352.

He is a Ministerial as well as a Judicial Officer; and therefore where an Exception is to the Sheriff, viz. That he is of Kin, or Tenant to the Party, or where 'tis at his Suit, or if any Default is in him by Partiality, or otherwise, in making the Panel; in either of these or like Cases, the Coroner shall return the Process.

But then if the Original Process is directed to him, all other Process in the same Suit must be so likewise, though another and

and more indifferent Sheriff be appointed whilst that Suit is depending.

And if such Process is directed *Coronatoribus*, it hath been held, Two may return it, though there are more in the County, but one cannot; for in this Case they are but as one Officer; and therefore if one arrest a Debtor, and he escapes, the Action shall be brought against both. 3 Levinz 399.

An Inquisition for Murder *super visum Corporis*.

Suffex, ff. **I**nquisitio indentat' capt' apud L. in Com' pzed' coram me W. V. un' Coronatore Dom' Reg' pro Com' pzed' die Veneris 30 die Aprilis, Anno, &c. super visum Corporis T. R. apud L. pzed' felonice interfecit' adtunc & ibid' mortui jacentis, super sacram' pzed' pzed' & legalium hominum ville de L. pzed' & trium aliarum villarum propinquarum, viz. Barcomb' Ringmere & Walling pzed' moris est ad inquirend' qualiter & quomodo pzed' T. R. ad mortem suam devenit, viz. super sacram' (of the Jury) qui dicunt super sacram' suum quod pzed' T. R. die Anno & loco supradict' circa horam primam post meridiem pzed' die Veneris fuit in pace Dei & dia' Dom' Reg' nunc apud L. pzed' & adtunc & ibidem venit W. S. nuper de L. pzed' gen' felonice & ut felo dicti Dom' Reg' nunc & ex malitia sua pzed' die Anno hora & loco supradict' in pzed' T. R. in Com' pzed' insultum fecit & eundem T. R. cum quodam Gladio pzed' duorum solidorum quem idem W. S. adtunc & ibid' in manu sua dextra tenuit super dextram partem pectoris percussit & pupugit & plagam mortalem eidem T. R. dedit de qua quidem plaga pzed' T. R. instanter obiit & sic pzed' W. S. pzed' T. R. adtunc & ibidem felonice interfecit & murtheravit contra pacem dict' Dom' Reg' Coronam & Dignitat' suas & ulterius Jur' pzed' super sacram' suum pzed' dicunt quod R. S. de A. pzed' J. O. de, &c. tempore felonie & murtheri pzed' in forma pzed' fact' scil' die Veneris pzed' die 30 Aprilis, Anno, &c. apud L. pzed' in Com' pzed' circa horam primam post meridiem ejusdem diei felonice fuerunt presentes cum gladiis strictis & adtunc & ibidem auxiliantes confortantes & manutenen' pzed' W. S. ad feloniam & murtherum pzed' in forma pzed' faciend' & perpetrand' contra pacem dict' Dom' Reg' Coron' & Dignitat' suas Ar' insuper Jur' pzed' super sacram' suum pzed' dicunt quod pzed' R. S. & J. O. non habuerunt, nec eorum aliquis habuit ulla bona seu catalla terras vel tenemen' ad eorum noticiam in Com' pzed' tempore felonie & murtheri pzed' fact'. In cujus rei Testimonium, &c.

Upon one who hath hang'd himself.

Middl' ff. **I**nquisitio, &c. (as before) circa horam primam
 post meridiem ejusdem diei Deum pre Oculis
 suis non habens sed instigatione Diabolica motus & seductus in
 quodam pomario cuiusdam R. B. Gen' apud H. pzed' in Com'
 pzed' adtunc & ibid' solus existens quendam funem pretii unius
 denarii ipse idem W. R. adtunc & ibidem in manibus suis te-
 nuit & unum finem inde circa rumpum cuiusdam fraxini ibid'
 ligabit & sic seipsum adtunc & ibid' cum fune pzed' voluntarie &
 felonice suspendebat suffocabat & strangulabat & sic Fur' pzed'
 super sacram' suum pzed' dicunt quod pzed' W. R. modo & for-
 ma pzed' voluntarie felonice & ut felo de se murdzabit seipsum
 contra pacem dict' Dom' Reg' nunc, &c. & quod idem W. R.
 nulla habuit bona seu catalla terras neque tenementa in Com'
 pzed' ad eorum notitiam. In cuius rei Testimonium, &c.

If it be by cutting his Throat; then say,

Deum pre oculis non habens, solus existens in Domo sua
 mansionali voluntarie felonice & ut felo de se cum quo-
 dam cultro pretii trium denariorum quem in manu sua dextra
 adtunc tenuit jugulum suum secuit & seipsum occidit.

This Inquisition was held to be faulty by *Holt* Chief Justice,
 because 'tis not said that he died of the Wound; therefore
 these Words should be added to make it good, after the Word
Secuit.

ff. Et cum pzed' cultro adtunc & ibidem felonice debet sibi ipse
 mortale vulnus de quo quidem mortali vulnere pzed' R. W. ins-
 tanter obiit & sic felonice & ut felo de se adtunc & ibidem
 seipsum murdzabit. See after, in felo de se, a better Prece-
 dent.

If by Drowning; then say,

In quodam Flumine (or as the Case is) ibidem vocat', &c. * If it
 seipsum voluntarie & felonice * merfit & sic, &c. had been
 Emergit, 'tis naught. 2 Lev. 141. 3 Mod. 100.

Upon one non compos Mentis.

Inquisitio, &c. qui dicunt super Sacram' suum pzed' quod
 pzed' R. N. die & Anno supradictis & diu antes, scil' a primo
 die Aprilis Anno, &c. usq; ad dictum diem existens Lunaticus
 & non

& non compos Mentis solus venit ad quendam pontem vocat'; &c. & adtunc & ibid' seipsum a ponte pzed' in aquam pzojicit & voluntarie & felonice seipsum merfit & sic, &c.

Upon One who died in Prison.

Midd', ff. **I**nquisitio, &c. qui dicunt super sacram' suum quod pzed' W. B. qui antea cominissus fuit ad gaolam per T. P. Baronet' pzo suspitione cujusdam felonie per pzetat' W. B. perpetrat' in dicta gaola die & Anno supradictis ex visitatione Dei obiit & sic Jur' pzed' super sacram' suum dicunt quod pzed' W. B. ad mortem suam modo & forma pzed' devenit, & non aliter. In cujus rei Testimonium, &c.

Upon One who was murdered in a Robbery.

Inquisitio, &c. qui dicunt super sacram' suum quod die Veneris 30 die Aprilis, Anno, &c. sic accidit, quod quidam ignotus Deum pze Deulis non habens sed instigatione Diabolica motus & seduct' bi & armis, viz. gladiis & pugionibus inter horas quintam & sextam ante meridiem ejusdem diei apud H. pzed' in Com' pzed' in alta via Regia in & super pzetat' R. N. adtunc & ibid' in pace Dei & dict' Dom' Reg' erissen' insultum fecit & pzed' ignotus cum quodam gladio pzetii duorum solidor' quem ipse in manu sua adtunc & ibidem tenuit pzedict' R. N. super dextram partem ventris sui adtunc & ibidem felonice percussit & eidem R. N. adtunc & ibidem cum gladio pzed' unam plagam mortalem, profunditatis quatuor pollicium & latitudinis unius pollicis dedit de qua quidem plaga mortali pzed' R. N. adtunc & ibidem instanter obiit & sic Jur' pzed' super Sacram' suum pzed' dicunt quod pzed' ignotus apud H. pzed' in Com' pzed' modo & forma pzed' pzetat' R. N. felonice interfecit & murdzabit contra pacem, &c. & ulterius Jur' pzed' super Sacram' suum pzed' dicunt quod pzed' ignotus postquam ipse feloniam & murdzum pzed' sic in forma pzed' perpetrasset fugam fecit contra pacem, &c.

On an Infant murdered, super visum Corporis.

Midd', ff. **I**nquisitio, &c. capt. &c. coram me R. R. Gen' uno Cozonato' dia' Dom' Reg' in Com' pzed' super visum Corporis cujusdam Infantis Masculi de corpore A. B. nuper de H. in Com' pzed' nat' ibidem mortui facen' per sacram' (of the Jury) qui dicunt super sacram' suum pzedict' quod pzetat' A. B. Deum pze Deulis suis non habens sed instigatione Diaboli mota & seducta die Veneris, &c. Anno, &c. apud

apud H. in Com' pzed' in & super infantem masculum pzed' adtunc & ibidem in pace Dei & dir' Dom' Reg' existen' insul- tum fecit & pzed' A. B. cum manibus suis pzed' Infantem felo- nice voluntarie & ex malitia sua pzedogitata suffocavit & stran- gulavit de qua quidem suffocatione & strangulacione pzed' In- fans apud H. pzed' in Com' pzed' instanter obiit & sic, &c.

Cottage.

TIS a House erected since the Statute, not having four Acres of Land in Fee-simple or in Tail laid to it, and near it, and which is usually occupied with it. What it is. 31 Eliz. c. 7.

If a Cottage was built before the Statute of 31 *El.* and afterwards converted into two Dwelling-houses without Four Acres of Land, both are Cottages.

If a new House is built since the Statute upon an old Foundation before, it is a Cottage.

If the Land is sold from the House, or that from the Land, 'tis a Cottage.

But if a new House be built upon an old Foundation before the Statute, 'tis no Cottage. No Cot- tage.

By Order of Justices at Sessions; but this must be with Leave of the Lord of the Manor; but if the Lord will not give Leave, Sessions alone may tolerate for a particular Time. How it may be to- lerated.

Major Part of Churchwardens and Overseers of the Poor, by Leave of the Lord, in Writing under Hand and Seal, may set up a Cottage upon the Waste, at the Charge of the Parish, for poor and impotent Persons; this must be confirm'd by the Sessions. 43 *Eliz. cap. 2.*

Not to Houses in Cities or Towns corporate, Boroughs, or Market-Towns. To what Houses the

To no Houses of Labourers in Mines, nor to Houses of Brick and Tile-makers and Limeburners, so as such Houses be with- in a Mile of their Work. 4 Acres do not extend.

To no Houses within a Mile of the Sea, or on the Side of a River (where the Admiral hath Jurisdiction) if a Sailor, or he who furnishes Ships with Victuals, liveth therein.

To no Houses in Forests, Chases, Warrens, or Parks, so long as Keepers live therein.

Cottage, when built, cannot be pulled down; but the Builder, or he who converts a House built to a Cottage, forfeits Punish- ment for a Cottager, not having 10 *l.* to the King. 4 Acres.

He who upholds and maintains such a House, forfeits 40 *s.* per Month.

Whether

Cottage.

Inmates. Whether a Cottage hath four Acres or not; whether 'tis in City or in Borough; there must be no Inmates under Penalty of 10 s. per Month, which the Owner or Occupier of the Cottage must pay to the Lord of the Leet.

In this Matter, the Lord, &c. the Justices of Assise; and the Justices in the Sessions, have a concurrent Power to hear and determine; but the first Enquiry must stand.

Penalty of 10 s. per Month, how to be recovered.

It must be presented by the Jury, upon their own Knowledge, or an Indictment may be found by them; in either of these Cases the Lord hath a Title, or may distrain, as to bring an Action of Debt for the Forfeiture, or to levy it by a *Fieri facias* directed by his Steward to the Bailiff of the Manor: *Co. Ent.* 666.

Indictments concerning Cottages.

2 Rol. Rep. 38. Sid. 359.

FOR erecting of a Cottage, must conclude *contra formam Statuti*.

Must likewise conclude *contra pacem*, or otherwise may be quash'd; if it be for erecting *unum Messuagium pro Habitatione*, and not laying four Acres of Land, 'tis good, tho' he doth not say it is inhabited. *Roll Abr.* 2 Part 80.

1 Mod. 295.

It was formerly held to the Contrary, because the very Building was an Offence. 2 *Bulst.* 264. but the later Authorities are otherwise, for it must be shewed that the Building was *pro Habitatione*, those being the very Words of the Statute which creates the Offence. 1 *Vent.* 107.

The Sessions licensed *J. O.* to build a Cottage, and *R. N.* was indicted for refusing to perform this Order; but it was quashed, because it did not set forth, when, nor before what Justice he refused.

33 Ed. 1. Godb. 383.

Indictment for erecting and continuing of a Cottage five Years past, and not laying four Acres of Land, according to the Statute *De terris mensurandis*; quash'd, for not saying, That *voluntarie* he did continue it. Secondly, For not prosecuting within two Years. Thirdly, For alledging the Ordinance of 33 Ed. 1. to be a Statute, 2 *Cro.* 603. *tamen quare*, for the very Erecting is an Offence within the Statute.

Presentment at a Leet, for erecting a Cottage contrary to the Statute 31 *Eliz.* not laying four Acres of Land to it, according to the Statute *De terris mensurandis* in *H. 13 W.* this was adjudg'd a Cottage, and tho' the Caption of this Presentment was *ad Cur. visus plegii cum Cur' Baron.* it was held well, for here it would not be incertain, which Court took the Presentment, because the Court-Baron had no Authority to take it, therefore it could not be by that Court.

The Indictment was, *Per juratores presentatum existit*, That the Defendant had erected a Cottage, & *ulterius presentant quod continuavit*, &c. *contra formam Statuti*: After a Verdict, it was reversed by Writ of Error, because there was no Nominative Case to agree with the Verb *Presentant*; for the continuing the Cottage is a new Indictment, distinct from the first, and therefore *Juratores* in that Case shall not relate to this. *Mich. 6. W. & M. 4 Mod. 345.*

Indictments concerning Inmates.

THERE cannot be a joint Indictment against several; it must be several against every Person who suffers Inmates in their Houses. 2 *Rol. Rep. 164.*

For building a Cottage.

Midd' **J**UR', &c. quod D. P. de H. in Com' p'cedit' scilicet 30 die Aprilis, Anno Reg', &c. apud H. p'ced' in Com' p'ced' quoddam Cotagium pro habitatione erexit & adtunc & ibidem per spatium decem Mensium & amplius dict' Cotagium sic erect' pro habitatione voluntarie sustinuit continuabit & manutenuit ubi reuera quatuor acre terre mensurand' secundum formam Statut' de libero tenemento suo cum dicto Cotagio continue occupand' nunquam fuerunt adfect' vel assignat' contra formam Statut' in hujusmodi casu edit' & probis. necnon contra pacem, &c.

For suffering Inmates, against the Occupier of a House.

JUR', &c. quod J. O. nuper de Paroch' de H. in Com' S. p'ced' Husbandman, primo die Septembris, Anno Reg', &c. erixit' Occupator' cuiusdam Domus apud Paroch' p'ced' in Com' p'ced' dictam domum in quatuor separal' tenementa pro habitatione aliorum hominum adtunc & ibidem divisit & convertit ad quod p'ced' J. O. separal' subtenentes cum familiis suis in dictis tenementis sic ut p'fertur per ipsum divisit & convers. ibidem cohabitare voluntarie locabit, dictosq; separal' subtenen' cum familiis p'ced' a dicto primo die Septembris, Anno supradicto per spatium decem Mensium tunc p'xor' sequen' in dictis tenementis cohabitare & commorari permisit in magnum periculum inficien' habitantium ibidem malis contagiis & ad depauperation' parochianorum Parochie p'ced' & ad onerand' parochiam p'ced' cum multis pauperibus ad commune

County-Court.

commune nocumentum omnium ligeorum & subditorum dict' Dom' Reg' ibidem commoran' necnon contra pacem dict' Dom' Reg' coron' & dignitatem suam ac contra formam Statut' in hujusmodi casu edit' & probis.

For converting of a House into a Cottage, and for continuing of it.

JUR', &c. quod 4 die Julii, Anno, &c. quidam T. P. de H. in Com' S. scilicet occidentalem partem rursusdam domus mansionalis ipsius T. P. tunc & adhuc existen' in H. pred' in Com' pred' viz. unam Aulam & duas Cameras convertit in Cotagium pro Habitatione (If the House be new built, then say) Ererit edificium ad vel in Cotagium pro Habitatione ut quidam S. P. de H. pred' in Com' pred' Labourer, eadem occidentali parte dicte Domus pro Habitatione sua uteretur qui quidem S. P. dictum Cotagium modo inhabitat' ubi revera pred' T. P. nunquam adfecit vel assignavit dicto Cotagio quatuor Aclas terre secundum ordinationem de terris mensurandis computandas de libero tenemento ipsius T. P. vel de hereditate sua prope dictum Cotagium facientes adeo ut cum dicto Cotagio continue occupat' essent quamdiu pred' Cotagium inhabitat' erit in magnum dict' Dom' Reg' contemptum ac contra pacem, &c. & contra formam Statuti in hujusmodi casu edit' & probis. Et ulterius presentant quod pred' T. P. quoddam Cottagium sic ut prefertur conversum pro Habitatione a dicto quarto die Julii Anno supradicto usque ad quartum diem Mensis Maii tunc pro' sequen' apud H. pred' voluntarie sustinuit manutenuit & continuabit in magnum dict' Dom' Reg' contemptum ac contra pacem, &c. & contra formam Statuti, &c.

Cotton. See Wool, and working thereon.

County-Court.

Sheriff, Under-Sheriff, or Sheriff's Clerk, entring Plaint in County-Court, in Absence of the Plaintiff or his Attorney, or above one Plaint in one Cause, they or the Plaintiff may be examined by a Justice of Peace, and he shall certify that Examination three Months afterwards into the Exchequer, and the Offender must pay 40 s. to the King and Prosecutor.

Sheriff shall issue Estreats out of the County-Court: Two Justices (*Quorum unus*) shall view them; and there must be Two Parts indented and sealed by the two Justices and Sheriff, and one of them must remain with the Sheriff. 11 H. 7. cap. 15. Counter

Counterfeits.

IT is an Offence at Common Law, and 'tis likewise enacted, That getting Money or Goods falsely and deceitfully by counterfeit Letters, &c. and being convicted thereof at Quarter-Sessions, shall suffer any corporal Punishment, except Death.

Two Justices (*Quorum unus*) may bind the suspected Person to appear at the next Sessions, or bail him till that Time, &c. or may commit him at their Discretions. 33 H. 8. cap. 1.

Anno 15 Car. One Terry got a Wedge of Silver, Value 200 l. Cro. Car: by a false Note, in the Name of another, and being convicted; 564. he had a Sentence to stand in the Pillory, and was fined 500 l. and committed during Pleasure; tho' my Lord * Coke tells us, *3 Inst. 133. That a Man cannot be *fined* upon the Statute for this Offence, because the Law directs only a corporal Punishment.

At another Time, one Hubert of Norfolk procured Webster to Cro. Eliz. personate A. B. who was then beyond Sea, and in his Name to 530. 12 Rep. acknowledge a *Fine* of his Lands, for which he was fined and 123. Moor imprisoned, and the *Fine* levied was made void; but now by 21 630. Jac. cap. 26. this is made Felony.

Indictment for Counterfeiting a Letter, &c.

Middl' ff. **J**UR', &c. quod quidam J. O. nuper de H. in Com' S. Yeoman, primo die Maii, Anno Reg', &c. apud L. in Com' pzed' quasdam falsas & contrafectas literas in nomine R. B. de H. pzed' in Com' pzed' Ar' cuidam T. P. adtunc tenen' pzed' R. B. (or as the Case is) directas falso & deceptibe fecit imaginat' fuit & debilabit posteaq; scil' eodem primo die Maii, Anno supradicto idem J. O. pzed' falsas & contrafectas literas pzedato T. P. falso & deceptibe apud L. pzed' in Com' pzed' dedit & deliberabit, colozę & rationę quarum quidem falsarum & contrafectar' literar' pzed' sic ut pzedetur dicto T. P. adtunc & ibidem deliberat' pzed' J. O. eodem primo die Maii, Anno supradict' apud L. pzed' in Com' pzed' viginti libras bone & legalis monete Angl' de denariis pzed' R. B. in manus & possessionem ipsius J. O. & ad usum suum proprium falso & deceptibe obtinuit & requirebat ad grave damnum ipsius R. B. in malum exemplum aliorum in consimili casu delinquentium & contra pacem dict' Dom' Reg' nunc coron' & dignitat' suas necnon contra formam Stat' in hujusmodi casu edit' & probis.

Custom, and Custom-house Officers.

Resisting, hindring, affronting or abusing, or wounding Officers or Deputies, shall be committed by the next Justice till next Quarter-Sessions; to be fined, not exceeding 100*l.* and to remain in Prison till discharg'd by Order of the *Exchequer*, or till he discover who set him to work. 13 & 14 *Car. 2. cap. 11.*

One Justice, by Oath of two Witnesses, may commit any Person assisting in the landing or shipping prohibited Goods, or for which any Duty is payable, if such Person have no Warrant, or if no Officer be present; there to remain till he find Sureties for his Good Behaviour, and till he be discharg'd by the Lord Treasurer, &c.

For the second Offence, Commitment for two Months, or till he pay 5*l.* to the Sheriff, for the Use of the King; or till he be discharg'd by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the *Exchequer*.

3 *An. cap. 9.* Officers for collecting the Duties on Candles and on Soap may be sworn before the Commissioners of Excise, or a Justice of Peace, well and truly to execute their Office; and afterwards the Justice must give such Officer a Certificate thereof.

Several Duties are by the said Act imposed on Paper, Linens, Stuffs, Silk, Calicoes, &c.

And upon Oath made by a credible Person, that he hath Reason to suspect some of those Goods, for which the Duties ought to be paid, are in the Possession of a Dealer or Trader, without being mark'd or stamp'd as the Act directs; Two Justices (if not within the Weekly Bills) may by Warrant give Power to any Officer of the Duties, without the Assistance of a Constable, in the Day-time, to search for the same, and to open Doors, Chests, Trunks and Packets, to seize such Goods and to bring them to the next Office to the Place where they were seized.

A Warrant against those who abuse or resist a Custom-house Officer, and a Mittimus to send the Offender to Gaol.

To the Constable, &c. of H. in the County of *Sussex*, and to the Keeper of the Common Gaol there.

Midd' ff. **W**Hereas Complaint hath been made unto me by T. P. of H. &c. being an Officer of his Majesty's Customs, That J. O. and T. B. of H. aforesaid, Yeomen, did lately, with

with Force of Arms, resist the said T. P. at T. in your County, being then in the Execution of his said Office. These are therefore in his Majesty's Name to command you, the Constable of, &c. to apprehend the said J. O. and T. B. and to deliver them to the Keeper of the common Gaol in the said County, together with this Warrant: Hereby also commanding you the said Keeper to take into Custody the said J. O. and T. B. and them safely to keep until the next Quarter-Sessions which shall be held for the same County, there to be punished according to the Statute in that Case made and provided. And hereof fail not at your Perils. Given under my Hand and Seal, &c.

R. B.

A Warrant against an Offender assisting in the landing Goods, and carrying them away without paying Custom.

To the Constable and Tithingman of H. in the County of S. and to either of them.

Suffex, ff. **W** Hereas Complaint hath been made unto me, That Two Witnesses. J. O. of, &c. hath lately assisted in the landing and carrying away several Goods at L. in the said County, for which a certain Duty was due and payable to his Majesty, which was not paid: And whereas it appeareth to me, upon the Examination of, &c. and others, That he the said J. O. had not any Warrant for his so doing, and that he had not given Notice thereof to any Officer of the Customs, and that no such Officer was there present: These are therefore in his Majesty's Name to command you to apprehend the said J. O. and bring him before me, or some other Justice of the Peace for this County, to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

Commitment for the first Offence.

To the Constable of, &c. and to the Keeper of the Common Gaol of the County of Suffex.

Suffex, ff. **W** Hereas it hath been duly proved before me, That 13 & 14 J. O. of, &c. hath (as in the former Warrant:) Ca. 2 c. 11. These are therefore in his Majesty's Name to command you the One Justice. said Constable, to convey the said J. O. to the common Gaol, Two Witnesses. and to deliver him to the Keeper thereof, together with this Warrant: Hereby also requiring you the said Keeper to take the said J. O. into your Custody, and him safely to keep until he shall find Sureties for his Good Behaviour, and until he shall be discharged

Custom, and Custom-house Officers.

charged from the same by the Lord Treasurer, Chancellor, Under-Treasurer or Barons of the Exchequer: And hereof fail not at your Perils. Given, &c.

Commitment for the second Offence.

One Justice, Sussex, ff.
Two Witnesses.

Whereas (as in the former Warrant:) And whereas the said J. O. hath been already duly convicted before this Time for the said Offence, and hath since his Conviction offended in the like Kind: These are therefore in his Majesty's Name (as in the former Warrant) and him safely to keep for the Space of two Months, without Bail or Mainprise; or until he shall pay unto the Sheriff of the said County the Sum of 5 l. for the Use of his said Majesty; or until he shall be from thence discharged by the Lord Treasurer, Chancellor or Under-Treasurer, or Court of Exchequer: And hereof fail not. Given, &c.

6 G. c. 21. After 1 Aug. 1720. If any Officer of the Customs be forcibly hindered, wounded or beaten in the due Execution of his Office by any armed Persons tumultuously assembled, to the Number of eight or more, the Offender being duly convicted thereof, shall by Order of the Court before whom the Conviction was made, be transported to some of the King's Plantations in America, for such Terms as the Court shall think fit, but not exceeding seven Years, as by an A& 4 Georgii; and if he return before the Expiration of the Term, shall suffer as a Felon, and have Execution awarded against him, as one attainted of Felony, without Benefit of Clergy.

But if such Offender within two Months after his Offence, and before his Conviction, shall discover two or more of his Accomplices to the Commissioners of the Customs, so as they be convicted of the said Offence, the Discoverer shall have 40 l. for every Offender discover'd, and shall himself be discharged.

Any other Person discovering within three Months after the Offence, &c. shall have the like Reward of 40 l. to be paid by the Cashier of the Customs.

Cut-work. See Bone-Lace.

Cut-

Cutting out Tongues, &c.

BEfore the Statute of 5 H. 4. it was not Felony to cut out the Tongue, or put out the Eyes of any one; and therefore when Men were beaten, wounded and robbed, it was usual to put out their Eyes, or cut out their Tongues, that the Offenders might not be accused.

This Mischief is prevented by that Statute, by making it Felony: And my Lord Coke tells us, That from the Time of the Making of this Law, for above the Space of two Hundred Years, he could not find more than one Person indicted upon this Act. H. 4. c. 5.

But notwithstanding this Law, Cutting off Ears was not Felony; for by the Statute of 37 H. 8. it was no greater Offence to cut off the Ear of a Man, than to cut out the Tongue of any living Beast; for in both Cases the Offender is to forfeit 10 l. to the King, and treble Damages to the Person grieved. 37 H. 8. c. 6.

It was a Question after these Laws, and before the Statute of 22 Car. 2. Whether cutting off the Privy Member, tho' the Man should be taken in Adultery, was Felony or not? For by *Bratton* it is said, That in such Case, *sequitur poena aliquando capitalis*; and yet I find, that Anno 13 H. 3. one *John*, a Monk, was taken by *Henry Hall* in the Act with his Wife, and he cut off the Privy Members of the Monk, and was only indicted for a Mayhem. 3 Inst. 188.

But now by the Statute of 22 Car. 2. Cutting out an Eye, ^{22 & 23} Slitting of the Nose, or Cutting it off, or the Lip, or Cutting ^{Car. 2.} off, or Disabling any Limb or Member, with an Intention to maim or disfigure the Person, is made Felony without Benefit of Clergy, in the Actor, Counsellor, Aider or Abettor being privy to the Offence.

One *Stapleton* was lately convicted at the Sessions in the *Old Baily* upon this Act, for putting out the Eye of one *Russel*, by flinging *Mercury* in his Face; and afterwards in *Hilary*, 1 Jac. he pleaded his Pardon.

Indictment for putting out Eyes.

Suffex, ff. **J**UR', &c. quod J. O. de H. in Com' predict' Yeoman, 23 die Julii, Anno Regni, &c. in quodam loco apud H. predict' in Com' pzed' (vocat' the Wallyns) vi & armis in quendam T. P. de H. pzed' in Com' predict' Yeoman, in pace Dei & dict' Domini Reg' tunc & ibidem existen' insultum fecit, & adtunc & ibidem ex malitia sua precoxigata H. 4. c. 5.

Deer-stealing.

* Or Dig- gitata * cum quodam baculo quod ipse idem J. O. in manu
tis & un- sua dextra adtunc tenuit pretii unius denarii oculos ipsius
Guibus as T. P. felonice effodit & eruit contra pacem dict' Dom' Reg'
the ale Cozonam & dignitatem suas, ac contra formam Statut' in
requireth. hujusmodi casu edit' & probis.

Indictment for cutting out a Tongue.

Suffex, ff. **J**URK, &c. quod R. N. nuper de, &c. 30 die Apri-
lis, Anno, &c. vi & armis in & super quendam
T. P. adtunc & ibidem in pace Dei & dict' Dom'
Reg' existen' apud L. in Com' pzed' insultum fecit & ipsum
verberabit, vulnerabit ac quodam cultello quem pzed' R. N.
adtunc in manu sua dextra tenuit pretii 6 d. linguam ipsius
T. P. adtunc & ibidem felonice eruit & amputabit contra pa-
cem Dom' Reg' nunc & contra formam Statuti predicti.

Deer-stealing.

THE Statutes which relate to this Head are, viz. 13 R. 2.
cap. 13. That a Layman not having 40 s. per Ann. or a
Clerk not having 10 l. per Ann. shall not keep a Dog to destroy
any Deer: The Punishment is Imprisonment for a Year.

The next Statute is 5 Eliz. cap. 11. Entering any Park to kill
or chase Deer without Licence of the Owner, must suffer three
Months Imprisonment, and be bound to Good Behaviour for
seven Years.

But the Party grieved might in Sessions release the Good
Behaviour, and might likewise in Sessions recover treble Da-
mages.

† These were to be assessed after three Months expired, and by the Justices. These Laws were ineffectual to suppress Offences of this Na-
ture, and therefore Anno 3 Jac. cap. 13. a Statute was made,
That if any Man should be convicted in the Sessions of unlaw-
ful Chasing or Killing any Deer, he should pay treble † Da-
mages to the Party grieved (or by the Statute of 7 Jac. 13.
the Party might at his Choice take 10 l.) suffer three Months
Imprisonment, and afterwards to remain in Prison till he found

* The Party being satisfied, the Justices in Sessions might release the Good Behaviour. * Sureties for his Good Behaviour for seven Years.
This Statute seemed to extend only to the Chasing and Kil-
ling in Parks and enclosed Grounds, &c. and no Reward for
an Informer; and therefore Anno 13 Car. 2. cap. 10. another
Statute was made, viz. That not only Coursing and Killing, but
Hunting or Taking away Deer in any Ground where Deer are
kept,

kept, the Forfeiture is 20 l. one Moiety to the Informer, the other to the Owner of the Deer.

The Offence must be against the Consent of the Owner, or the Person intrusted to keep the Deer; the Prosecution must be within six Months after the Offence; the Conviction must be before one Justice of the Peace by Confession or Oath of one Witness, and the Penalty is to be levied by Warrant from that Justice, before whom the Offender was convicted, by Distress, and if that could not be taken, then he might be committed to the House of Correction for six Months, or the common Gaol for a Year, and not be discharged till Security be given for Good Behaviour, for one Year after his Enlargement.

Those who are aiding or assisting therein, incur the same Punishment.

The Question was, Whether he who lent Dogs to another to hunt, was aiding and assisting therein, (*viz.*) in the *Hunting*? and by the Opinion of three Judges he was; but *Holt* Chief Justice was of a contrary Opinion, for this being a Penal Law, shall be construed strictly; and if so, then he who lent the Dogs could not be *assisting* in the Act of Hunting, and so not within the Words of the Statute, *aiding and assisting therein*, tho' he might be assisting *therunto*.

A Justice of Peace enter'd into a Glover's House, and finding a Deer-Skin, asked him how he came by it, who told him that he bought it of R. B. and he not giving a good Account of himself, the Justice convicted him, and held good. 1 Salk. 383.

But the Penalty of 20 l. was found by Experience too little to deter Offenders of this Nature; for they might kill and wound many Deer at the same Time, and yet forfeit no more; therefore *Anno 3 & 4 W. & M.* another Statute was made, *viz.* 3 & 4 W. That for *Coursing and Hunting the Offender forfeits 20 l. and for taking in Toils, Killing and Wounding any Deer, forfeits 30 l. for every Deer, one Third to the Informer, the other to the Poor of the Parish where the Offence is committed, the other to the Owner of the Deer.*

The Prosecution must be within a † Year after the Offence; † If the Prosecution be the Conviction before one Justice of the County where it was done, or the Party taken; it must be by Confession, or Oath of one Witness: The Penalty is to be levied by Distress, by Warrant of that Justice before whom the Offender was convicted; and if no Distress can be found, then the Party may be committed for a Year, and stand in the Pillory one Hour on a Year, it is Market-day, in a Town next adjoining to the Place, where the Offence was done.

Offences against the Act 3 & 4 W. shall be commenced within three Years from the Time of the Offence, but not after. 9 Geo. cap. 22.

A Constable, &c. may by Warrant from one Justice enter and search the Houses of suspected Persons, and if he find any

Deer-stealing.

Venison, or Skins of Deer, or Toils, he shall carry the Person before a Justice, and if he do not give a good Account how he came by them, and produce the Party of whom bought, or prove the Sale upon Oath, he shall be convicted of the Offence, and be subject to the Penalties for Killing of Deer.

If the Offender do not pay down the Money upon the Conviction, the Constable may detain him till a Return be made of the Warrant for distraining, but he cannot keep him in Custody above two Days.

Before *Certiorari* shall be allowed to remove a Conviction or other Proceedings, the Party convicted shall enter into a Bond of 50 l. to the Prosecutor, with Sureties to be approved by the said Justice, to pay full Costs upon Oath, within a Month after the Conviction is confirmed, or a *Procedendo* granted.

5 G. c. 15. He must likewise at the same Time enter into another Bond to the Justice before whom the Conviction was made, in the Penalty of sixty Pounds for each Offence, to prosecute the *Certiorari* with Effect, and to pay such Justice the Forfeiture due upon the Conviction, to be distributed as the Statute directs, or to render the convicted Person to such Justice, within one Month after the Conviction shall be affirmed, or a *Procedendo* granted, or in Default thereof, the Justice may proceed to the Execution upon the Conviction.

After the Conviction is affirmed, and the Rule of Court thereof delivered to the Justice, he may proceed as if a *Procedendo* had been granted.

A Person convicted upon the Statute 3 & 4 W. shall before he is discharged, enter into a Bond of 50 l. to the Person against whom the Offence was committed, with a Condition for his Good Behaviour, and that he will not offend in like manner; which if he refuse, he shall be committed to the County-Gaol until he give such Bond; and if he shall afterwards be convicted for any Matter or Thing in that Statute, then the Bond shall be deemed to be forfeited, and the Penalty shall be recovered with full Costs, in any Court at *Westminster*, to be distributed in the same manner as the Forfeitures by that Act; and the Party convicted shall be likewise liable to the Penalty and Forfeitures in that Act.

9 G. c. 28. Entering into a Park or Paddock, or other enclosed Ground where Deer are usually kept, and wilfully wounding or killing any red or fallow Deer there, without the Consent of the Owner or Person entrusted with the Custody of the Park, or shall be aiding therein, and being indicted thereof and convicted by Verdict or by his own Confession, shall be transported for seven Years, and the Court may make over such Offender to the Use of any Person who will contract for the Performance of his Transportation.

1 Salk. 381. Upon a *Certiorari* on a Conviction for Deer-stealing, it was objected, That it appeared to be a Year after the Day of the Information,

Information; but adjudged that 'tis good, because 'tis not from the *Conviction*, but from the *Information* that the Time is to be computed; for if the Information is in due Time, the Conviction may be at any Time afterwards, and the Penalty need not be distributed by the Conviction (*viz.*) 10 l. to the Party grieved, 10 l. to the Poor, and 10 l. to the Informer, for the Judgment in such Cases seldom makes a Distribution; 'tis enough to say, That *convictus est and f. vis faciat 30 l. juxta formam Statut.*

Conviction of Deer-stealing was affirmed in B. R. where-^{1 Salk. 379.} upon a *Levari facias* was awarded to the Sheriff, who levied and sold the Goods; adjudged that the Sale was good, because the Record cannot be sent back again to the Justices, and as the Court of B. R. have Power to confirm the Conviction, by Consequence they have Power to award Execution, which must be to the Sheriff, who is their Officer, and not to the Constable, and it must be by *Levari facias*, because the Words of the Statute are, That the Offender shall forfeit, &c. to be levied by Distress, and where the Law gives a Distress for a publick Benefit, the Officer may sell.

Any Keeper or Officer of Forest, Park, or Place where Deer are usually kept, who shall be convicted on this Act for killing or taking away any Red or Fallow Deer, or being aiding or assisting therein, without the Consent of the Owner, or Officer in chief, shall forfeit 50 l. for each Deer, to be levied by Distress, and to be distributed as aforesaid, and for want of such Distress, shall be committed for three Years without Bail, and set in the Pillory two Hours, in a Market-Town next the Place where the Offence was done, by the chief Officer of the Town, or his Under-Officer.

Any Person pulling down, or causing to be pulled down, a Pale or Pales, or Wall of any Park or enclosed Place where Red or Fallow Deer are kept, without the Consent of the Owner; and being convicted thereof, by his own Confession or Oath of one Witness, before one Justice of the County where the Offence was done, shall be subject to the Forfeitures and Penalties by this Act for the killing one Deer, in the same manner as if he had been convicted thereof.

A Defendant sued for putting this Act, or 3 & 4 W. in Execution, may plead the general Issue, and give the Acts and special Matter in Evidence, and if he recover, shall have treble Costs, to be recovered as any other Costs are.

Where any Venison or Skin of a Deer shall be found in the Custody of a Person, and it shall appear that the Person bought it of one who might be justly suspected to come by it unlawfully, and he doth not produce the Party of whom he bought it, or prove on Oath his Name and Place of his Abode, then the Person who bought it shall be convicted of such by one or more Justices, and shall be subject to the Penalties inflicted for Killing a Deer by the Act 3 & 4 W.

The

The Defendant was convicted at the Sessions, and fined for Deer-stealing; and a Writ of Error was brought in B. R. and the Court was moved, that the Offender might be bailed till the Errors should be determined; but it was denied, because he was in Execution for a Fine. *Sid.* 286.

1 Salk. 182. There were two Persons convicted for Deer-stealing, and *Cro. Eliz.* Judgment was given, That each of them should forfeit 30 *l.* and this being removed into B. R. it was objected, that there ought to be but one 30 *l.* forfeited; but adjudged that the Forfeiture is not in Nature of a Satisfaction to the Party grieved, but as a Punishment to the Offender, and the Words of the Statute are, that they shall respectively forfeit, and Crimes are several, tho' Debts are joint.

Punishment of those who keep Guns and Engines to kill Deer.

BY the Statute of 19 H. 7. *cap.* 11. none shall keep Deer-Hays, or Buck-stalls, nor shall stalk with Bush any Deer, except in his own Park, under Penalty of Forty Shillings *per* Month for keeping such Deer-Hays, &c. and 10 *l.* for Stalking.

Two Justices in Sessions may examine the Offender, and commit him till he pay the Forfeiture, of which the Justices are to have the Tenth Part.

By the Statute of 3 Jac. 1. *c.* 13. he that keeps a Gun to kill Deer, not having 40 *s.* *per Ann.* in Lands, or 200 *l.* in Goods, any Person having 100 *l.* *per Ann.* may take away the Gun and keep it.

An Indictment for chasing a Buck in the King's Forest.

Suffex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Yeoman, & T. P. de eadm, Yeoman, 27 die Octobris Anno Regni, &c. Forestam dict' Dom' Regis de L. in Com' pzed' fregerunt & intraverunt & unum Damam (Anglice vocat' a Buck) ad balenciam trium librarum adtunc & ibidem invent' sine licentia & contra voluntatem dict' Dom' Regis cum Canibus lepozariis (vocat' Greyhounds) venati sunt, & fugaverunt & dictam Damam apud W. infra pzeinct' Foreste pzed' cum funibus (Anglice Wares) iuspendider' & occiderunt, & sic suspensum & occisum illicite ceperunt & asportaverunt contra pacem dict' Dom' Regis nunc Cozon' & dignitatem suas, &c.

*A Warrant against a Person for stealing Deer,
(Or as the Fact is.)*

To the Constable of the Parish of H. &c.

Suffex, ff. **W**Hereas it hath been duly proved before me, That ^{3 & 4 W. & M. one Justice.} J. O. of H. in the County aforesaid, did on the 10th Day of October last past unlawfully course (or as the Fact is) one Fallow Deer in the Park of J. S. of, &c. without his Consent, or of the Person intrusted with the Keeping thereof, contrary to the Statute in that Case made and provided: These are therefore in his Majesty's Name to require you to levy by Distress and Sale of the Goods of the said J. O. the Sum of 20 l. which said Sum is forfeited by him, being convicted before me for the said Offence; and that you ^{For every Deer wounded} pay one third Part thereof to T. P. who informed me of the said Offence so committed and done by the aforesaid J. O. and another third Part ^{30 l.} unto the Churchwardens or Overseers of the Poor of the Parish of P. where the said Offence was committed, for the Use of the Poor of the said Parish; and the other third Part thereof to J. S. the Owner of the said Deer; and if no Distress can be found and taken, that then you certify the same forthwith to me. Given under my Hand and Seal, &c.

The like Warrant *mutatis mutandis*, for assisting and aiding, &c.

Commitment for Want of Distress.

To the Constable of, &c. and to the Keeper of the Gaol of S. &c. and to the Chief Officers of the Town of L. in the County aforesaid, for the Time being.

Suffex, ff. **W**Hereas you the said Constable, &c. were lately re- ^{3 & 4 W. & Geo. c. 15. tis 50 l. a- gainst a Keeper of a Park.} quired by Warrant under my Hand and Seal to levy the Sum of 20 l. by Distress and Sale of the Goods of J. O. of H. &c. by him forfeited, for an Offence which he committed against the Form of the Statute made in the Third and Fourth Year of the late K. William and Q. Mary, Entituled, An Act, &c. And whereas I have been certified by you, That you cannot find a sufficient Distress to be taken of the Goods and Chattels of the said J. O. for the Offence aforesaid. These are therefore in his Majesty's Name to require you to apprehend the said J. O. and to convey him safely to the Gaol of the said County, and deliver him to the Keeper thereof, together with this my Warrant for your so doing: Requiring also you the aforesaid Keeper to take into your Custody the said J. O. ^{and}

* 'Tis three and him safely to keep for the Space of * one whole Year next ensuing, Years a- and that then you deliver him to the chief Officer of L. being the Town gainst a next adjoining to the Place where the Offence was committed, or some Keeper of of the Under-Officers, together with this Precept, who are required to a Park. set the said J. O. in the Pillory in the said Town on some Market-Day, for the Space of one † Hour: And hereof fail not, as you will

† By 5 G. severally answer the Contrary at your respective Perils. Given under c. 15. 'tis two Hours my Hand and Seal, &c.

against a Keeper of a Park.

An Indictment for hunting and taking Deer.

JURAT, &c. quod J. O. de H. in Com' pzed' Yeoman 27 die Junii, Anno Regni, &c. circa horam duodecimam in nocte ejusdem diei aggregatis sibi diversis aliis Malefactoribus & Pacis Domini Regis Perturbatoribus ignotis vi & armis videlicet baculis ferro munitis, pugionibus & cultellis & aliis armis Clausum & Parcum cuiusdam J. S. Armig' apud B. in Com' pzed' illicite fregerunt & intraverunt & Damas ipsius J. S. adtunc & ibidem depascentes & cubantes in Parco pzedict' cum duobus Canibus Leporariis (Anglice Greyhounds) venatus est, & cum rete vocat' a Buck-stall, quod pzed' J. O. in Parco pzed' adtunc habuit & Canibus pzedict' duos Damas adtunc & ibidem cepit occidit & asportabit contra Pacem, &c. ad grave damnum ipsius J. S. & contra formam statut', &c.

A Warrant against one who hath killed or wounded, and taken away a Deer.

To the Constable, &c.

Suffex, ss. **W**Hereas Complaint hath been made unto me, That J. O. of, &c. did lately unlawfully kill and wound several Deer in the Park of, &c. These are therefore to charge you forthwith upon Sight hereof, to apprehend the said J. O. and to bring him before me, or some other of his Majesty's Justices of the Peace for the County, to answer the Premises, &c.

A War-

A Warrant to levy the thirty Pounds for killing or wounding a Deer.

To the Constable of, &c.

Sussex, ff. **W**Hereas J. O. of, &c. hath been duly convicted before me upon Oath, That he did unlawfully wound, kill and take away one Fallow Deer in and from the Park of Sir T. B. Baronet, on the 30th Day of March last past, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited the Sum of 30 l. These are therefore to require you, or some one of you, forthwith to levy the said 30 l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said J. O. and that you pay and dispose one third Part thereof to R. H. who informed me of the said Offence; and that you distribute another third Part thereof, to and amongst the Poor of the Parish of L. where the said Offence was committed; and that you pay the other third Part to the aforesaid Sir T. B. being the Owner of the said Deer; and if it shall happen that the said J. O. shall not have any Goods or Chattels within your Parish sufficient to satisfy the said Forfeiture of 30 l. that then you certify me thereof, that such farther Order may be taken therein, as is pursuant to the said Statute. And hereof fail not, &c.

A Mittimus for Want of a Distress, viz. To remain in Gaol for a Year without Bail, and at the End of the Year to stand in the Pillory for an Hour. Which see *antea*, and the Penalty encreased against a Keeper of a Park.

The like Warrant *mutatis mutandis*, to levy 30 l. for taking in Toils; and the like Commitment for Want of Distress; or against Aiding, Assisting, &c.

A Warrant against a Keeper of a Park, to levy 50 l. on him for killing a Deer.

To the Constable of, &c.

WHereas J. O. being a Keeper or Officer of the Park of W. R. of, &c. in the County of W. Esq; in which Park, Red and Fallow Deer are usually kept, was on the 12th Day of July last past, duly convicted for * killing one Fallow Deer in the said Park, without * Or 12. the Consent of the Owner of the said Deer, or the Officer in Chief entrusted with the Care of the said Park, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited 50 l. These are therefore to command you in his Majesty's Name forthwith to levy the said Sum of 50 l. &c. as in the former Warrant, and so to be distributed.

A War-

Deer-stealing.

A Warrant to levy 30l. for pulling down the Pales of a Park.

To the Constable of, &c.

5 G. c. 15.
1 Witness,
or his own
Confession. **W** Hereas J. O. of, &c. on the Day of the Date hereof, hath been duly convicted before me, that he on the 12th Day of July last past, did † pull down three Pales, of the Park of W. R. of, &c. in which Park Red and Fallow Deer are usually kept; and that the said J. O. committed the said Offence, contrary to the Statute in that Case made and provided, and without the Consent of the Owner, or any other Person entrusted in chief with the Keeping of the said Park, by Reason whereof he hath forfeited ‡ 30l. These are therefore, &c.

† or caused to be pulled down any Pale or Wall.

‡ to be distributed as by the Statute 3 & 4 W.

A Warrant to enter the House of a suspected Person, and search for Venison, &c.

To the Constable, &c.

3 & 4 W.
& M. c. 11. Suffex, ff. **W** Hereas Complaint hath been made unto me by, &c. That several Fallow-Deer have been lately unlawfully coursed, hunted, killed, wounded, and taken in Toils by Persons unknown, in the Park of Sir T. B. Baronet in the said County, and have been carried out of the same; and I being informed, That Venison and Deer-Skins have been lately seen in your Parish: These are therefore to require you, upon Sight hereof, forthwith to enter into and search the Houses, Out-houses, Yards, and other Places in your said Parish, of such Person or Persons whom you shall justly suspect or be informed to have any Venison or Skins of Deer; and if you shall find any such, that then you apprehend the Person so suspected to have unlawfully come by the same, or in whose House or Places any such Venison or Skins of Deer shall be found, and bring them before me, or some other Justice of the Peace for this County, to be proceeded against according to Law. And hereof fail not. Given, &c.

A War-

A Warrant to levy the 30l. for not giving an Account how he came by such Venison or Skins.

To the Constable, &c.

Suffex, ff. **W**Hereas J. O. of L. hath this present Day been duly convicted before me, by not giving a good Account to me how he came by certain Pieces of Venison, which upon Search was found in his House, in the Parish of H. &c. and not being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof to him; so that he hath forfeited the Sum of 30l. according to the Form of the Statute in that Case made and provided: These are therefore to require you forthwith to levy the said 30l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said J. O. and that you pay one third Part thereof, ut prius.

Mittimus for Want of Distress.

To the Constable of, &c. and to the Keeper of his Majesty's Gaol of H. in the County aforesaid.

Suffex, ff. **W**Hereas you the said Constables were by my Warrant charged to levy 30l. on the Goods and Chattels of J. O. by Distress and Sale thereof, the said Sum being forfeited by him for not giving me a good Account (as in the former Warrant) And whereas you have returned unto me, that the said J. O. hath not sufficient Distress whereby the said Forfeiture may be levied: These are therefore to require you to apprehend the said J. O. and to convey him to the common Gaol at H. in the said County, and to deliver him to the Keeper thereof: And I do hereby command you the said Keeper, to take the said J. O. into your Custody, and to keep him safely in the Gaol without Bail for the Space of * twelve Months next ensuing, and at the End thereof to deliver him to the Chief Magistrate of the Town of L. who is to set the said J. O. in the Pillory in the said Town on some Market-day, there to stand for the Space of one † Hour. And hereof fail not, &c.

3 & 4 W. & M. c. 10. s. G. c. 15. a Keeper of a Park for killing or taking a Red or Fallow Deer, to be levied by Distress, and for Want of Distress, then the like Mittimus.

* By 5 G. c. 15. 'Tis three Years without Bail, and to be in the Pillory † two Hours against a Keeper of a Park for killing or taking a Red or Fallow Deer.

Note, If the Offender doth not pay the 30 l. upon his Conviction, the Constable may keep him in Custody, not exceeding two Days, in which Time he may know whether any Distress is to be taken; and this is to prevent his Running away, or Removing his Goods.

Note,

Deer-stealing.

Note, Before any *Certiorari* shall be allowed, the Offender must give Bond to the Prosecutor to pay full Costs within a Month after Conviction confirmed, or a *Procedendo* allowed: These Costs are to be ascertained on Oath.

Noverint Universi, &c. *Nos*, &c. There must be two Sureties, such as the Justice shall approve.

The Condition of the said Bond.

3 & 4 W. **T**HE Condition of this Obligation is such, That whereas the above-bounden J. O. was lately convicted before H. P. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, at the Prosecution of R. H. above-named, for that he the said J. O. had several Pieces of Venison and Deer-Skins found in his House in H. &c. and not being able to give Account he came by the same, in such Manner as is required by a Statute in that Case made and provided: And whereas the said J. O. hath obtained a Writ of *Certiorari* to remove the said Conviction, and the Proceedings thereon, into his Majesty's Court of King's Bench at Westminster: If therefore the said J. O. shall pay or cause to be paid unto the said R. H. his full Costs to be ascertained upon the Oath of the said R. H. which he shall sustain in any wise concerning the Prosecution of the said Conviction, within one Month after the same shall be confirmed, or a Writ of *Procedendo* shall be allowed thereon by the Court, that then this Obligation shall be void.

He must likewise at the same Time give another Bond to the Justice before whom the Conviction was made, in the Penalty of Sixty Pounds, with Sureties.

The Condition of the Bond.

5 G. c. 15. ff. **W**HEREAS the above-bounden J. O. was duly convicted before the above-named H. P. Esq; one of his Majesty's Justices of the Peace for the County of S. for killing a Deer in the Park of G. B. at R. in the said County, and he the said J. O. hath procured a Writ of *Certiorari* to remove the said Conviction and Proceedings thereon, into the Court of King's Bench at Westminster; now the Condition of this Obligation is such, that if the said J. O. shall prosecute the said Writ of *Certiorari* with Effect, and shall pay or cause to be paid unto the above-named H. P. his Heirs, Executors or Administrators, all the Forfeitures due upon the said Conviction, within one Month after the same shall be confirmed, or a *Procedendo* allowed, or otherwise shall then render the said J. O. unto the above-named H. P. without any further Delay, then this Obligation shall be void.

And before he is discharged, he must likewise give another Bond of 50*l.* but without Sureties to him to whom the Offence was done.

The

The Condition is as followeth.

WHereas the above-bounden J. O. hath been duly convicted for *G. c. 19.*
 killing a Deer in the Park of T. P. Esq; contrary to the
 Statute in that Case made and provided; now the Condition of this
 Obligation is such, that if the said J. O. shall from Time to Time,
 and at all Times hereafter be of the Good Behaviour, and if he shall
 not offend in like Manner, then this Obligation shall be void.

And now by another Statute 'tis enacted, that if any Person; *G. c. 19.*
 enter into a Park after 1 May 1719, or into any Ground en-
 closed, where Deer are usually kept, and wilfully shall kill
 or wound any Red or Fallow Deer, without the Consent of the
 Owner, or the Person entrusted with the Care of the Place; or
 being aiding or assisting in committing such Offence, and shall
 be convicted thereof, upon an Indictment at the Assizes, he
 shall be sent to some Plantation in America for seven Years, and
 shall be transferred by the Court to any Person who will con-
 tract for the Performance of his Transportation.

But this Act doth not repeal any former Law made against
 Deer-stealing, only if such an Offender is transported, he shall
 not be prosecuted upon any of those Laws.

*A Mittimus for the pulling down and destroying Pales
 in the Night-time.*

To the Constable, &c. and to the Keeper of the common
 Gaol, &c.

Suffex, ff. **W**Hereas Complaint hath been made unto me, That, &c. 4 W.
 J. O. of your Parish, &c. did on the second Day & M. 3.
 of May last past, in the Night-time of the said Day, pull down and *Month's*
 destroy several Pales of the Park of Sir T. P. Bar. in the County a- *prisonment*
 foresaid, contrary to the Statute in that Case made and provided: And *without*
 whereas the said J. O. hath been duly convicted before me this present *Bail.*
 Day upon Oath, for the said Offence: These are therefore to charge *By 5 G. c.*
 and command you to apprehend the said J. O. and to convey him to the *15. shall*
 Gaol aforesaid, and to deliver him to the Keeper thereof, together with *likewise*
 this Warrant: Commanding you the said Keeper to take him into *forfeit as if*
 your Custody, and him safely to keep in the said Gaol for the Space of *he had kil-*
 three Months without Bail. Given under my Hand, &c. *led one*
Deer.

Deodand. See casual Death in Homicide.

R

Dissenters.

Dissenters, and Divine Service.

BEfore I mention any Thing under this Title, relating to the Office of a Justice of Peace, I think it may not be improper to give a short Account of the Rise and Continuance of the Divisions amongst us, *viz.*

Some certain Ceremonies which had been used in Times of Popery, were thought fit to be continued by our Reformers, as useful to beget some Reverence in Holy Exercises, but chiefly in Hopes to bring those of the *Roman* Communion more easily to comply with that Reformation.

There were some Divines in the Beginning of the Reign of Queen *Elizabeth*, who fled from Persecution in the Reign of Queen *Mary*, and having by that Means seen the Methods and Usage of Foreign Churches, particularly that of *Geneva*, complained of this as a Compliance with Popery; and therefore, since we had reformed from the Errors of that Church, would have none of their Ceremonies continued in ours.

The Queen was perswaded by some Persons in Power, then at Court, to take the Revenues of the Bishopricks and Cathedrals into her own Hands, which would not only enrich the Crown, but it would likewise be an Expedient to unite all the reformed Churches, and to bring the *English* Church to the Model of that of *Geneva*.

This was opposed by some wise Ministers at that Time; who told the Queen, That if Matters of Religion came to be thus regulated here by popular Persons, they would quickly set up a Power distinct from hers in Church-Matters, which by Consequence would intrench upon her Prerogative.

This seemed so reasonable to her, that she resolved to maintain the ancient Government in the Church, and continued their Ceremonies; which the other Party did not dislike as unlawful, but for the Reasons aforesaid.

And now these Differences, which were small in the Beginning, became fixed and settled into Factions, and those who were against the Ceremonies, reproached the Churchmen with *Non-Residence*, *Pluralities*, and many Abuses in the Spiritual Courts; and thus Matters stood for many Years in her Reign.

Afterwards Lectures were set up in most Cities and Market-Towns: I will not examine whether this was done purely in Opposition to the Church, or whether it was upon any Dislike of the mean Performances of those Persons who served the Cure in those Places; it may be the later.

For in ancient Times, the settled Allowances for the Secular Clergy in great Towns, &c. was very small, because the
Per-

Perquisites were considerable by Oblations and otherwise ; and even in the later Ages of Popery, the Churchmen of these Places lived plentifully, tho' their Stipends were small ; for the Superstition of the Times provided Fees for them by *Obits*, *Exequies*, and *Masses*, and they were obliged to live singly.

But these Things being disused after the Reformation, and the Allowances of the Clergy in great Cities and Towns being still very small, might be Occasion for the richer Sort of People in these Places to maintain Men of greater Abilities than the Incumbents, by a voluntary Contribution.

These Men by their Zeal in Preaching, gained a Party to themselves ; who depending upon the Bounty of the People, were generally inclined to submit to the Humours of the chief Contributors, and by this Means the Division was still increased.

In the succeeding Reigns, the People were not only settled into Parties, but were distinguished by Names. *viz.* The *Court* and *Country* Parties.

The Clergy stood firm to the Interests of the Court ; and those who opposed that Interest in Civil Affairs, always cherished the other Party, commending them for good Protestants, and that it was the Interest of all Parties to unite.

But instead of that the Breach was made wider by the Civil Wars, and both then and afterwards some designing Persons have, by sly Insinuations and other Methods, laboured to make both Parties Tools by Turns, to break in upon and crush one another, that they might make a Way for the common Enemies to enter.

But the Nation being come to a better Temper, a Law was made, *Anno 1 Guil. &c.* That neither the Statutes of 1 *Eliz.* cap. 2. 23 *Eliz.* cap. 1. nor 3 *Jac.* cap. 4. (which I shall mention more particularly hereafter) shall extend to Persons dissenting from the Church.

They must likewise subscribe the Declaration mentioned in the Statute of 30 *Car.* 2. cap. 1.

These Oaths and Subscriptions the Justices in Sessions have Power to administer and take ; and these who do take the Oaths must pay 6 *d.* for registering, and 6 *d.* for a Certificate.

They shall not be liable to the Penalties of 35 *Eliz.* & 21 *Car.* 2. nor be prosecuted in any Ecclesiastical Court for Non-conformity.

But they must not assemble in Places with Doors locked, barred or bolted, not until the Place is certified to the Bishop of the Diocese, or to the Archdeacon, or to the Justices at Quarter-Sessions, and registred there, and they have a Certificate thereof.

If chosen to any Parish-Office, they may execute it by Deputy.

Dissenters, and Divine Service.

Then as to their Preachers, if they take the Oaths, and subscribe the Declaration at the Quarter-Sessions where they live, they shall not be liable to the Penalties in the Statute of 17 Car. 2. cap. 2. Which is not to come within 5 Miles of any Town that sends Burgesses to Parliament, if he hath not declared his Assent and Consent to the Book of *Common Prayer*, &c. under the Penalty of 40*l.* nor to the Penalties in 22 Car. 2. cap. 1. which is, being convicted of Preaching at a Conventicle, he forfeits 10*l.* nor to the Penalty of 100*l.* mentioned in 13 & 14 Car. 2.

But then these Preachers must declare their Approbation, and subscribe the Articles of Religion, except these Words in the 20th Article, *viz.* The Church hath Power to decree Rites and Ceremonies, and Authority in Matters of Faith, and except the 34 Article; which is, That the Church hath Power to appoint Rites and Ceremonies which are not contrary to the Word of God, and that private Persons are bound to conform to such Ceremonies: And except the 25th Article, which concerns the reading Homilies in Churches: And the 36th Article, which relates to the Consecration of Bishops, &c.

Preachers thus subscribing, &c. shall not serve on Juries, and shall be exempt from Parish Offices.

Disturbing
Preachers.

And if any Person disturb them in Preaching, he shall find Sureties to be bound with himself in a Recognizance of 50*l.* to appear at the Sessions; and being convicted there, shall forfeit 20*l.* to the King.

If he will not find Sureties, he shall be committed to Prison till next Sessions.

The Proof must be by two Witnesses on Oath before one Justice.

Anabap-
tists.

There is a Clause in this Act, which concerns the Preachers in *Anabaptists* Congregations, *viz.* That if they subscribe the Articles of Religion, excepting in that Part of the 27th Article, which relates to Infant Baptism, and shall take the Oaths, and make and subscribe the Declaration, that they shall enjoy the same Advantages which Dissenting Ministers have by that Law.

Quakers.

Any Justice of Peace may require a Dissenter to make and subscribe the said Declaration, and to take the aforesaid Oaths; but because there are some Persons who scruple to take any Oath, therefore Provision is made to exempt them from the Penalties aforesaid, if they make and subscribe the said Declaration, and likewise the Declaration of Fidelity; (which see in Title Oaths)

They must likewise subscribe a Profession of their Christian Belief, in these Words:

I A. B. profess Faith in God the Father; and in Jesus Christ his Eternal Son, the true God; and in the Holy Spirit, one God blessed for evermore: And I do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

These

These Declarations and Subscriptions must be recorded at the Quarter-Sessions.

And if any Person refuse this Oath when tender'd, he shall not be admitted to make and subscribe the Declarations, tho' required by a Justice of Peace at the Sessions, if he cannot, within 31 Days after such Tender, produce two Protestant Witnesses to testify on Oath that they believe him to be a Protestant Dissenter, or produce a Certificate under the Hands of four Protestants conformable to the Church, or who have taken the Oaths, &c. and he must likewise have a Certificate under the Hands and Seals of six or more of the Congregation to which he belongs, owning him to be one of them.

And until such Witnesses and Certificate are produced, the Justice may take a Recognizance, with two Sureties of 50 l. for producing the same, or otherwise he shall be committed till that Time.

But by this Act 'tis declared, That all the Laws made for frequenting Divine Service on the Lord's Day, are in Force against all Persons, except they come to some Religious Assembly allowed by Law.

Now the Statutes which were made for frequenting the Church, are these: *Viz.*

By 1 Eliz. cap. 2. All Persons above the Age of Sixteen are enjoined to come every Sunday and Holiday to their Parish-Church, Chapel, or to some Place where Common Prayer is used, and to abide there soberly during the Time of Service, or shall forfeit 12 d. for every Offence, to be levied by the Churchwardens for the Use of the Poor of the Parish, and may be punish'd likewise by the Censures of the Church, having no reasonable Excuse to absent. 3 Levinz. 61.

About 23 Years afterwards, another Statute was made, by which it was enacted, That every Person not coming to Church as enjoined by the Statute of 1 Eliz. and being thereof *lawfully convicted*, should forfeit 20 l. per Month; and if they did forbear for a Year, after a Certificate thereof made by the Ordinary in B. R. then one Justice of the Peace of the County where they dwelt might bind them with two Sureties in 200 l. at the least, to be of the Good Behaviour; which Recognizance is not to be discharged till they come to Church.

The Forfeiture was to be divided between the King, Poor and Prosecutor; and if not able, or not paid within three Months after Conviction, must be committed till they conform, or pay it.

The Prosecution upon these Acts, is to be within a Year and a Day after the Offence, and before the Justices in Sessions.

But Conformity before Judgment, either before the Bishop of the Diocese, or in Sessions, discharges the Penalties.

It was a Question whether a Man might be prosecuted in the Spiritual Courts, for not coming to his own Parish Church; for

Dissenters, and Divine Service.

since the Division into Parishes was by the Common Law, if the Consequence thereof brought the People under a new Obligation to resort to their proper Parish Churches, it ought to be examined and tried at Common Law; that the Statutes which require Men to come to Church, have been usually look'd on as sufficiently complied withal, if a Man went to any other Parish Church; but it was agreed that an entire Neglect is punishable in the Spiritual Court.

4 Leon. 54. Several Persons were indicted upon this Statute of 23 Eliz. and were outlawed upon it, and moved the Court to be discharged upon Submission and Conformity; but it was denied until the Outlawry should be reversed, or they pardoned.

1 Lut. 201. Those who would see a Precedent for an Action of Debt brought on this Statute, may find it in 1 Lut. 201.

29 Eliz. c. 6. About six Years afterwards it was enacted, That the Conviction should be at B. R. or at the Assizes, and that all Grants with Powers of Revocation should be void against the Queen, so as not to deprive her to levy the said Forfeiture of 20 l. per Month.

And after such Conviction, the Offender shall in every *Easter* and *Michaelmas* Term pay into the *Exchequer* after the Rate of 20 l. per Month, without any other Conviction; which if he neglects to do, then a Process was to issue out of that Court to seize all his Goods, and two Thirds of all his Lands and Leases, for so long Time as he shall forbear coming to Church.

Noy 117. Note, That by the Statute of 23 Eliz. the Informer is to have a third Part of the Forfeiture; but if the Defendant is convicted

1 Lut. 208. by Indictment upon the Statute of 29 Eliz. before an Information brought, then the Queen is to have the Penalty; and therefore such a Conviction is a good Plea in Bar to any Information afterwards brought.

3 Jac. c. 4. By the Statute of 3 Jac. cap. 4. one Justice of the Division where a Person liveth not coming to Church, may, upon Proof of his Default by one Witness on Oath, send for the Offender, and if he cannot give a satisfactory Excuse, the Justice may send a Warrant to the Churchwardens of the Parish to levy the 12 d. for every Offence, and if no Distress can be taken, may then commit him till paid.

Retaining a Servant absenting, &c. for a Month, the Master forfeits 10 l. per Month.

In *Michaelmas* Term, 12 Jac. Dr. Foster was prosecuted upon the aforesaid Act of 23 Eliz. by Information in B. R. *tam quam*, &c. for the 20 l. per Month; and it was objected, That he ought to be convicted upon a former Prosecution before this Information could be brought; because he is not to incur the Penalty of 20 l. till he is lawfully convicted: Which are the express Words of the Statute.

But it was resolved, That he might be convicted of this Penalty by the very Information then brought, and that it was not

not necessary to shew a former Conviction, for till that Time nothing is forfeited.

Then it was objected, That the 20^l. was given to the Queen ^{28 Eliz.} by two subsequent Statutes, so that the Informer could have ^{35 Eliz.} nothing.

But it was resolved, That the Statute of 28 *Eliz.* did not take away the Benefit which Informers had by the Statute of 23 *El.* because it extended only to Indictments, and left Informations as they were before; and as to the 35th of *Eliz.* that Statute gave the Queen as large a Remedy as the former; for before that Statute she had no Remedy but by Indictment; which was defective in this Case, because if a *Feme Covert* had been convicted, the Queen could not have levied the Penalty on her Husband, for he was no Party to the Suit: Now that Statute gave her an Action of Debt for it, in which the Husband might be join'd and answer for the Non-conformity of his Wife.

An Information was brought for not coming to Church for ^{2 Cro. 142.} such a Time, and concluded, *contra formam Statuti*; but because there are three Statutes concerning this Matter, and it is uncertain to which it doth refer, therefore it was discharged; but it is now held, That *contra formam Statuti* is well enough. ^{3 Lev. 61.}

Note, by 10 *A. c. 2.* Persons in *England, &c.* having any Office ^{10 A. c. 2.} Civil or Military, or receiving any Pay, Salary, *&c.* under the Queen, or by her Authority, or in the Navy, *&c.* or Employment in the Household, *&c.* or any Mayor, Alderman, Recorder, Bailiff, Town-Clerk, Common Council-Man, or others bearing any Office of Magistracy or Place of Trust relating to the Government of any Cities, Corporations, *&c.* who by 13 *Car. 2.* & 25 *Car. 2.* are obliged to receive the Sacrament, *&c.* that shall after Admission into such Office, Employment, *&c.* be present at any Conventicle, *&c.* where ten Persons, besides those of the Household, or ten where no Household are assembled, *&c.* altho' the Liturgy be there used, where the King shall not be prayed for according to the Liturgy (except where such Offices are allowed to be used, wherein are no Directions to pray for the King) shall on Conviction forfeit 40 *l.* and be disabled to hold such Office, or any other whatsoever.

But tho' so convicted, *&c.* yet if afterwards he conform for one Year, and receive the Sacrament three Times in that Year, he shall then be capable of any of the said Offices, *&c.*

And being so convicted, *&c.* and afterwards so conforming, he shall the next Term after his Admission into any such Office, *&c.* make Oath in Writing in some of the Courts at *Westminster*, or at the next Quarter-Sessions, That he hath conformed for one Year before such Admission, without being present at any Conventicle, *&c.* and received the Sacrament three times accordingly; which Oath shall be there enrolled and kept on Record.

Dissenters, and Divine Service.

None to be punish'd by this Act, unless Oath be made of the Offence before a Judge, Justice, &c. within ten Days after the Offence, and Prosecution within three Months; nor any Conviction to be but on Oath of two Witnesses; nor shall any Office of Inheritance be made void, so as a sufficient Deputy be appointed till the Persons conform.

Also the Toleration Act of 1 *W. & M.* is hereby confirm'd; and if any Dissenter (not in Orders) entitled to the Benefit of that Act, shall be prosecuted on any Penal Statute, from which Protestant Dissenters are exempted, if he shall take and subscribe the Oaths and Declaration; or being a Quaker, the said Declaration, and the Declaration of Fidelity, and also the Christian Belief, before two Justices, (to be returned to the Quarter-Sessions to be there recorded) he shall be entitled to the Benefit of this Act, as fully as if qualified within the Time prescribed.

And any Dissenting Preacher duly qualified, may officiate in any Congregation duly certified and recorded, tho' the same be not in the County wherein he was qualified: But shall if requir'd by a Justice, &c. produce a Certificate of his having qualified himself, and also subscribe the Declaration before such Justice, if thereto required.

And in *Scotland*, all Advocates, Writers to the Signet, Notaries Publick, and Ministers of the College of Justice there, shall take and subscribe the Oath appointed by 6 *Anna*, c. 14. except such as have already taken the same, and on Neglect or Refusal, be *ipso facto* incapable to enjoy such Employment, or to practise in Time coming. And no Person shall be admitted to the Office of Advocate, Writer, &c. till he hath taken and subscribed the said Oath. And for other Matters touching Divine Service, &c. in *Scotland*, see 10 *Anna* c. 7.

But the Stat. 12 *Anna* Sess. 2. c. 7. for preventing the Growth of Schism, &c. doth not belong to this Treatise; for no Authority is thereby given to Justices of the Peace; however both the last mention'd Statutes are now repealed by 5 *G. c. 4.*

5 *G. c. 4.* And if any Magistrate shall be at any publick Meeting for Religious Worship, other than the Church of *England*, in the peculiar Habit, or attended with the Ensigns of his Office, and shall thereof be convicted by due Course of Law, he shall be disabled to hold such Office, and be incapable to bear any publick Office whatsoever in *England*.

The Precedents upon the Statute of 1 *Will.* are as follows.

The Form of the Certificate by four Protestants,
conformable within 31 Days after the Tender, &c.

WE whose Names are hereunto subscribed, being all conformable to the Church of *England*, do hereby certify whom it may concern,

concern, that we do verily believe that J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate by four Protestants not conformable, &c.

WE whose Names are hereunto subscribed, having all taken the Oaths, and subscribed the Declaration enjoined by the Statute made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws; do hereby certify, That we do verily believe J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate from Six of the Congregation.

WE whose Names are hereunto subscribed, being Members of the Congregation of, &c. do hereby certify whom it may concern, That we do own J. O. of, &c. to be one of our said Congregation. Given under our Hands and Seals, &c.

A Recognizance with two Sureties, &c.

Suffex, ff. **M**emorand' quod 11 die Junii, &c. venerunt coram me R. B. Armigero, un' Justic' dict' Dom' Regis ad pacem in Com' pzed' conserband' assign' J. O. de H. in Com' pzed' Husbandman, T. P. de eadem Taylor, & T. B. de P. in Com' pzed' Yeoman, & recognoverunt se debere dict' Dom' Regi, viz. quilibet manucaptor pzed' in quinquaginta libris bone & legalis monete Anglie de bonis & catallis terris & tenementis suis fieri & levare ad opus dict' Dom' Regis, heredit' & successorum suorum si pzed' J. O. defecerit in Conditione infrascript'.

THE Condition of this Recognizance is such, That whereas the Oaths enjoined to be taken by an Act made in the first Year of the Reign of the late King William and Queen Mary, entituled, An Act, &c. were, on the first Day of August last past, tendred to the above bounden J. O. by the aforesaid R. B. which he the said J. O. did then refuse to take; And whereas also he was on the third Day of the said Month of August required by the said R. B. to make and subscribe the Declarations enjoined likewise by the said Act; Now if the said J. O. shall within Thirty-one Days after such Tender of the said

* If he can said Declarations as aforesaid, produce * a Certificate under produce 2 the Hands of four Protestants, who are conformable to the Protestant Church of England, or of four others who have taken the Oaths, and subscribed the Declaration in the said Act mentioned, attesting him the said J. O. to be a Protestant Dissenter; and shall likewise produce within the Time aforesaid, another Certificate under the Hands and Seals of six or more sufficient Men of the Congregation to which he the said J. O. doth belong, owning him thereby to be one of them; that then this Recognizance shall be void, &c.
 Occasion of these Certificates.

Commitment where the Party cannot give such Security.

To the Constable, &c. and to the Keeper of the Gaol for the said County.

Suffex, ss. **W** Hereas J. O. of H. in the County aforesaid, Yeoman, hath refused to take the Oaths, enjoin'd by an Act, Entituled, An Act for exempting their Majesties Subjects, &c. being lawfully tendred to him on the first Day of August last past: And whereas the said J. O. hath since been required by R. B. one of his Majesty's Justices of the Peace for the said County, on the fifth Day of August last past, to make and subscribe the Declaration mentioned and enjoined by the said Act; but before the said J. O. is to be admitted to the same, he is within thirty-one Days after such Tender of the Declarations, to produce two sufficient Protestants to testify upon Oath, That they believe him to be a Protestant Dissenter, or a Certificate, &c. ut prius. And whereas the said J. O. hath not within the Time aforesaid, produced such Certificate as aforesaid, or two Witnesses to attest his being a Protestant Dissenter, and hath not entred into a Recognizance with two Sureties, in the Penal Sum of 30 l. &c. for his producing the same: These are therefore to command you to apprehend the said J. O. and him safely to convey to the Gaol aforesaid, and to deliver him to the Keeper thereof, together with his Precept: Commanding also you the said Keeper to receive the said J. O. into your Custody, and him safely to keep, until he has produced such Certificates, or two Witnesses as aforesaid. Given under my Hand and Seal the Tenth Day of September, &c.

A Certificate from the Clerk of the Peace for one who produceth Witnesses or Certificates according to the aforesaid Act, for which he is to take 6 d. and no more.

Suffex, ff. **T**Hese are to certify whom it may concern, That J. O. of, &c. appeared before his Majesty's Justices of the Peace at the General Quarter-Sessions of the Peace held for the said County at L. on the seventh Day of, &c. and declared that he was a Dissenter from the Church of England, and scrupled to take any Oath, but desired to be admitted to make and subscribe the Declaration mentioned in a Statute made in the 30th Year of the Reign of the late King Charles the Second, Entituled, An Act to prevent Papists from sitting in either House of Parliament; and likewise to make and subscribe the Declaration of Fidelity and Profession of his Christian Belief in the Form enjoined by one other Act made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws, &c. and did then and there give full Satisfaction to the Court, That he was not a Papist; and * produced a Certificate under the * Or two Hands of four Protestants, which the said J. O. made appear to the Protestant said Court to be † conformable to the Church of England; who did Witnesses certify, That they believed him to be a Protestant Dissenter; and did upon Oath, also produce another Certificate under the Hands and Seals of six sufficient Men of the Congregation of, &c. to which the said J. O. belongs; he the said J. O. was admitted at the said Sessions to make and make it subscribe the aforesaid Declaration and Profession of his Christian Belief; and did make and subscribe the same accordingly, which are there they have entered on Record. Signed and dated the Day of Nov. in the taken the Year of our Lord, 1701. Oaths, &c.

A Warrant to bring an Offender in not coming to Church, before the Justices.

To the Constable of, &c.

Suffex, ff. **W**Hereas I have been informed upon Oath, That T. P. of, &c. did not upon Sunday last past repair to any Church, Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided: These are therefore to require you to bring the said T. P. before me, or some other Justice of the Peace for this County to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

A War-

Dissenters, and Divine Service.

A Warrant to levy the Penalty of Twelve Pence for not coming to Church.

To the Churchwardens of the Parish of H. in the County of
Suffex, or either of them.

Suffex, ff. **W** Hereas I have been informed, That T. P. of, &c. did not upon Sunday the 17th Day of August last past, nor upon the Sunday next following, nor upon the Sunday next after that, repair to any Church, Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided; and the said T. P. being brought before me, did not make a sufficient Excuse and due Proof thereof, so as to satisfy me why he absented himself as aforesaid: These are therefore to require you, or one of you, to levy 3 s. upon the Goods of the said T. P. by Distress and Sale thereof for his three Defaults, as aforesaid, and to employ it for the Use of the Poor of the said Parish; and if no such Distress can be taken, that you then certify me thereof as soon as may be, that such farther Proceedings may be had therein as to Justice doth appertain.

If no Distress can be taken, then the Party may be committed to Gaol: The Form of the Warrant is as followeth.

To the Constable of, &c. and to the Keeper of the Gaol, at, &c.

Suffex, ff. **W** Hereas the Churchwardens of, &c. were lately commanded by my Warrant to levy 3 s. upon the Goods of T. P. of the Parish of, &c. for not repairing to any Church or Chapel, or other usual Place appointed for Common Prayer, and there hear Divine Service on Sunday the seventh Day of August last past (ut prius) according to the Form of the Statute in that Case made and provided; and the said Churchwardens have certified unto me, That the aforesaid T. P. hath not any Goods or Chattels whereon to levy the said Penalties: These are therefore to require you the said Constables to take the aforesaid T. P. and to convey him to the Gaol of the said County, and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to receive him into your Custody, and him safely to keep until he shall pay the said 3 s. And hereof fail not. Given, &c.

Indictments upon the above-mentioned Statutes.

An Indictment upon the Statute of 1 Eliz. cap. 2.
for not coming to Church. *Vide 3 Jac. c. 4.*

Suffex, ff. **J** Ur, &c. quod F. Q. de H. in Com' pzed' Yeoman, & E. Ur' ejus uterque eorum existen' etatis 16 Annozum & amplius ac existen' Parochian' Ecclesie

Ecclesie Parochialis de H. pzed' in Com' Suffex pzed' infra quam quidem Ecclesiam Communes Precationes & alia Divina Servitia die Dominico pzo' post festum Sancti Michael' Archangeli Anno Regni Domini Regis nunc secundo, & decem diebus Dominicis tunc pzo' sequen' & sex aliis diebus Festivis eisdem decem dies Dominicis intervenientibus, dicebantur & utebantur pzed' F. & E. non haben' legalem nec rationabilem excusationem seu impedimentum abessendi ab Ecclesia pzed' in diebus pzed' quando Communes Preces Predicationes & Divina Servitia ibidem tunc dict' habit' & ministrat' erant non solum admittebantur adire Ecclesie pzed' de H. erissen' eorum Parochial' Ecclesia consuet' sed seipsos voluntarie absentaverunt & uterque eorum absentabit ab Ecclesia pzed' die Dominico pzo' post festum Sancti Michaelis Archangeli Anno Regni dict' nunc Regis primo & pzed' aliis decem diebus Dominicis tunc pzo' sequen' & pzed' aliis sex diebus Festivis inter eisdem decem dies Dominicis intervenien' tempore pzed' Communium Precum Predication' & Divin' Servitiorum ibidem in dictis diebus illis usitat' & ministrat' contra Pacem & in Contemptum dict' Dom' Reg' nunc & Legum suarum & Coron' & Dignitatem suas, ac contra formam Statuti pzed'.

The Prosecution upon the Act of 1 Eliz. afore-mentioned, must be by Way of Indictment at the next General Sessions after the Offence committed.

The Prosecution upon the Statute of 3 Jac. cap. 4. must be within a Month after the Offence, and by Warrant from the Justice of the Division where the Offender liveth.

An Indictment upon the Statute of 23 Eliz. cap. 1. for not coming to Church.

Suffex, ff. **J**UR' &c. quod J. O. de H. in Com' Suffex, Yeoman, decimo octavo die Augusti, Anno Regni Regis Georgii, &c. primo fuit etatis sexdecim Annorum & amplius, & a pzed' decimo octavo die Augusti usque ad decimum diem Julii tunc pzo' sequen' videlicet per spatium undecim mensium non accessit (Anglice, did not repair) Ecclesie sue Parochial' de H. pzed' nec alicui alie Ecclesie, Capelle, vel usuali loco Communis Precis, sed per totum tempus pzed' voluntarie ac obstinate * absque ulla rationabili causa abstinuit * ab eisdem per spatium undecim mensium pzed' contra formam Statuti in hujusmodi casu edit' & pzo'bis' in dict' Dom' Regis nunc & Legum suarum Contemptum, ac contra Pacem dict' Dom' Regis Coron' & Dignitatem suas.

If these Words had been omitted, the Indictment had been ill. Judg-

ment 20 l. per Month; and if absent a Year, bound to Good Behaviour, and not discharged till conform.

Aliter

Aliter.

23 Eliz.c.1. Sussex, ff.

JUR', &c. quod D. P. de H. in Com' pred' Gen' duodecimo die Februarii, Anno Regni, &c. fuit etatis serdecim Annorum & amplius & non accessit (Anglice, did not repair) ad Ecclesiam suam Parochial' nec ad aliquam aliam Ecclesiam, Capellam, sive usual' locum' Communis Precationis & divini Serbitii ad aliquod tempus infra spatium unius mensis pror' sequen' duodecimam diem Februarii, Anno supradicto, sed voluntarie & obstinate absq; aliqua legitima causa abstinuit ab eisdem, (Anglice, hath forborn the same) contra formam Statuti in hujusmodi casu edit' & probis' & contra Pacem dict' Dom' Regis nunc Cozon' & Dignitat' suas, &c.

Four Persons were indicted upon this Statute, for that neither they *nec eorum uterque* came to any Parish Church, &c. It was objected, That the Word *uterque* signified one of them, and not each of them; but it was held to be Surplusage, and not to hurt the Indictment.

'The Plea to this Indictment.

ET pred' J. O. in propria persona sua venit & defendit totum & quicquid quod est contra Pacem & in Contemptum Dom' Reg' nunc vel Legum suarum superius fieri supposit' protestando quod Indictamentum pred' versus eum exhibit' minus sufficiens in lege existit ad quod necesse non habet, nec per legem terre tenetur respondere, pro placito tamen idem J. O. ulterius dicit quod de pred' non accessu alicui Ecclesie, Capelle vel usuali loco communis Precis aut de absentatione inde contra formam Statuti pred' in Indictamento pred' specificat' vel de aliqua transgressionem offens' aut contempt' in Indictamento pred' superius fieri supposit' ipse non est inde culpabilis & de hoc ponit se super Patriam & W. Wheeler Gen' qui pro Dom' Reg' in hac parte sequitur similiter. Ideo ven' inde Jur' &c.

But Offences against this Statute may likewise be prosecuted upon an Information in the Courts at *Westminster*, and not only in the Counties where they are committed, for they are excepted out of the Statute of 21 Jac. cap. 4. which limits popular Actions by Informers to be prosecuted within the proper Counties.

An Indictment against a Minister for marrying without a Ring.

Suffex, ff. **J**UR', &c. quod J. S. de H. in Com' p'reb' Clericus ac Minister Ecclesie Paroch' de H. p'reb' existens machinan' & intenden' diversa insolita Schismata ritus & consuetudines inter populum dict' Com' Reg' Regni sui Angliæ suscitare & plurimos subditos a ritibus Ecclesie Anglican' & a forma Communis P'ecation' & Divini Servitii in Ecclesia Anglicana pie & recte stabilitat' & usitat' in Errores ducere quarto die Augusti Anno Regni, &c. apud H. p'reb' in Com' p'reb' videlicet in Ecclesia Paroch' ibid' quosdam T. P. & E. uxorem ejus in jure matrimoniali conjunxit & maritabit sine aliquo annulo nuptiali tempore solemnizationis sponsalium inter p'refat' T. P. & E. sed idem J. S. adtunc & ibidem sponsalia inter p'refat' T. P. & E. celebrabit licet p'refat' J. S. tempore celebrationis sponsalium p'reb' aliquem annulum non dedit prout juxta morem & consuetudinem Ecclesie Anglicane fieri debet & solet contra form' Statuti & Ordinat' in hujusmodi casu edit' & probis' & in dep'abat' Libri Communis P'ecationis, ac contra pacem, &c.

Against one for irreverently behaving himself at Church.

Suffex, ff. **J**UR', &c. quod M. V. nuper de H. in Com' p'cedit' Clericus, Minister & Curator Ecclesie Parochialis de H. p'reb' appunctuat' ad celebrand' & ministrand' P'eces sacra & Sacramentalia in eadem Ecclesia 4 die Augusti, Anno Regni, &c. & diversis diebus & vicibus tam antea quam postea irreverenter celebrabit & dicet p'ces & ministrabit Sacramentalia in Ecclesia p'cedit' non flectens Genua sua (Anglice, Kneeling) sed per totum tempus celebrationis & ministrationis earundem erecte stetit in malum exemplum aliorum in hujusmodi casu delinquentium, & contra formam & ordinem Libri (vocat' The Book of Common Prayer) ac contra formam Statuti in ejusmodi casu edit' & probis', &c.

For not using the Sign of the Cross in Baptism.

Suffex, ff. **J**UR', &c. quod E. G. nuper de L. in Com' p'cedit' Clericus & Rector Ecclesie Parochialis de St. A. in L. in Com' p'cedit' per spatium sex mensium ult' elaps' debuit dicere communes P'ecaciones secundum modum

dum & ordinem Libri (vocat' The Book of Common Prayer; &c.) ac debuit etiam infra tempus p̄ed' administrare Sacram' in Ecclesia p̄ed' p̄out mentionat' vel edit' sunt in Libro p̄dicto p̄dict' tamen E. G. apud L. p̄d' in Com' p̄ed' p̄ sex menses p̄ed' recusabat uti & dicere nec usus est Commun' P̄cation' in Ecclesia Paroch' p̄ed' p̄out mentionat' in illo libro, Et quod p̄efat' E. G. apud L. p̄ed' in Com' p̄ed' quarto die Augusti, Anno Regni, &c. ministravit Sacrament' Baptismi in Ecclesia Paroch' p̄ed' cuidam Infanti masculino cuiusdam J. O. in alia forma quam dicto libro illo Communis P̄cationis continetur & non faciebat Signum Crucis super Frontem ejusdem Infantis in ministrand' Baptism' illi sed Signum illud facere adtunc & ibidem contemptuose recusabit & denegabit in Contemptum dict' Dom' Reg' Legum & Stat' hujus Regni Anglie, necnon contra Pacem dict' Dom' Reg' Cozon' & Dignitat' suas, &c.

The Statute of 3 Jac. c. 4. gives Power to Justices in Sessions to enquire, hear and determine of all Recusants and Offences, &c. for not coming to Church; and that at the Sessions in which an Indictment shall be found against such an Offender to make Proclamation, commanding him to render himself to the Sheriff of the County before the next Sessions; and if he shall not then appear, it shall be a Conviction in Law upon the said Indictment for the Offence therein mentioned, as if a Trial had been by Verdict.

That upon such Conviction, he shall either in *Easter* or *Michaelmas* Term, which shall next happen, pay into the *Exchequer* after the Rate of 20 *l.* per Month, which shall be contained in the Indictment; and for every Month afterwards, without any farther Indictment or Conviction, 20 *l.* per Month by half-yearly Payments in the *Exchequer* as aforesaid, except the King will take two Parts in Three of the Lands of the Offender till he conform.

An Indictment upon this Statute.

Suffex, ff. **M**emozans, quod ad General' Session' Paris' tent', &c. Jurat', &c. quod R. B. de L. in Com' p̄ed' Gen' 11 die Sept. Anno Regni, &c. apud L. p̄ed' fuit etatis sedecim Annorum & amplius & non accessit (Angl' did not repair) Ecclesie Paroch' de S. M. infra L. p̄ed' nec alicui alii Ecclesie capelle sive usuali loco communis p̄cationis nec ibidem fuit tempore communis P̄cationis ad aliquod tempus infra decem Menses integros extunc p̄or' sequen' sed abstinuit ab eisdem (Anglice, hath forbore the same) per spatium p̄ed' in malum exemplum aliorum & contra Pacem dict' Dom' Reg' nunc Cozon' & Dignitat' suas, &c. necnon contra formam Statuti in hujusmodi casu edit' & p̄obil' & super hoc facta

facta hic in eadem Curia publica proclamatur pro Dom' Reg' secundum formam Statuti quod p'ed' R. B. corpus suum redderet Vicecomiti Com' p'ed' ante proximam Generalem Quarterialem Session' pacis tenend' pro Com' p'ed' ante quam quidem General' Quarterial Session' scil' 9 die Julii, esset p'or' General' Quar' Session' Pacis tunc tent' pro Com' p'ed' post Proclamation' sic ut prefertur fact' p'ed' R. B. corpus Vicecomiti Com' p'ed' non reddidit nec comperuit secundum formam & effectum cujusdam Statuti in ea parte edit' & provis. sed defalt' fecit unde idem R. B. convictus est.

This is no Judgment, because no Trial, and therefore tho' the Conviction should be erroneous, yet no Writ of Error will lie upon it, but the Remedy is to quash it in the *Exchequer*. Raym. 433.

For not wearing the Surplice.

Midd' ff. **J**UR', &c. quod W. W. nuper de B. in Com' p'ed' Clericus die Prominico, viz. quinto die Augusti Anno Regni, &c. apud B. p'ed' in Com' p'ed' (viz.) in Ecclesia Parochial' ibid' publice celebrabit preces matutinas diversis Parochianis & Inhabitantibus ejusdem Parochie adtunc & ibidem in Ecclesia p'ed' existentibus & tempore celebrationis precum illarum non induebat & usus fuit aliquo superpellicio (Anglice vocat' a Surplice) aut alio ornamento assignat' ministris utend' infra hoc regnum Anglie. Et quod W. W. p'ed' quinto die Augusti Anno supradicto tempore celebrationis precum p'ed' apud B. p'ed' in Ecclesia Parochial' p'ed' penitus recusabit induere sive uti aliquo superpellicio contra formam Statuti in hujusmodi casu edit' & provis. & contra pacem, &c.

For omitting Words in Baptism.

Midd. ff. **J**UR', &c. quod G. W. nuper de R. in Com' p'ed' Clericus & Rector Ecclesie Parochialis de R. p'ed' dict' esset quinto die Augusti Anno Regni, &c. apud R. p'ed' in Com' p'ed' in dicta Ecclesia Parochiali Sacramentum Baptismi cuidam Infanti femineo esset filie T. C. adtunc de R. p'ed' in Com' p'ed' administravit & adtunc & ibidem in Ecclesia p'ed' voluntarie & obstinate omisit & recusavit dicere tempore administrationis Baptismi p'ed' hec Anglicana verba sequen' (viz.) Que quidem verba mentionat' & expressa sunt in libro communis precat'ionis (Anglice, The Book of Common Prayer) in dicta communis precat'ionis derogationem & contra formam Statuti in hujusmodi casu edit' & provis. necnon contra pacem, &c.

For disturbing a Minister's Preaching.

Suffex, ff. **J**UR', &c. quod T. R. nuper de C. in Com' pzed' Yeoman, 5 die Augusti, Anno Regni, &c. apud C. in Com' pzed' voluntarie publice & contemptuose molestabat & perturbabat quendam T. W. Rectorem Ecclesie predicantem idem T. W. adtunc & ibidem ad illud faciend' ratione cure sue ibidem legitime onerat' & alia enormia eidem T. W. abtunc & ibidem intulit in malum exemplum aliorum in hujusmodi casu delinquen' & contra formam Statuti in hujusmodi casu edit' & probis. necnon contra pacem, &c.

Against a Minister, for not reading the *Common Prayer* according to the Act of Uniformity.

Midd. ff. **J**UR', &c. quod H. P. nuper de C. in Com' pzed' Clericus & Vicarius Ecclesie Parochialis de C. pzed' tunc existen' malevole affectat' erga communes preces appunctuatas uti in Ecclesiis & Capellis infra hoc regnum Anglie & auctoritate Parliamenti stabilit' & edit' que quidem preces content' sunt in quodam libro intitulat' The Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church of England, quinto die Augusti, Anno Regni, &c. die Dominico existente ac diversis aliis diebus Dominicis quibus preces in dicto libro mentionat' debuissent per pzed' H. P. legi vel dici secundum formam statut' in hujusmodi casu edit' & probis. apud C. pzed' in Ecclesia pzed' ex prava & nequissima mente sua non legit vel usus fuit sed easdem preces penitus omisissus fuit & uti totaliter recusavit in dicti Dom' Reg' contemptum ac in malum exemplum omnium aliorum in hujusmodi casu delinquen' & contra pacem, &c.

Distress. See Fees.

Distiller. See Brewers.

Dogs. See Game and Hunting.

Lords of Manors, but not under the Degree of an Esquire, may license Game-keepers within their Manors to seize Dogs of Persons not qualified; a Justice of Peace may license any other Person by his Warrant to search in the Day-time suspected Houses, and seize and keep the Dogs of unqualified Persons for the Use of the Lord of the Manor. 22 & 23 Car. 2. cap. 25. Also

Also Constables, &c. may by a Justice's Warrant, search the Houses of suspected Persons, and if they find any in the Possession of Persons unqualified, they must carry them before a Justice of Peace, and if they do not give good Account how they came by such Dogs, they shall be convicted by the Justice, and pay not under 5 s. not exceeding 20 s. for every Dog; one Moiety to the Informer, the other to the Use of the Poor, where the Offence was committed, to be levied by Distress; and if that cannot be taken, then must he be sent to the House of Correction, for any Time under a Month, but not less than 10 Days, there to be whipt and kept to hard Labour, 4 & 5 Will. & Mar. cap. 23. And no Certiorari shall be to remove the Conviction or other Proceedings, unless the Party convicted do, before the Allowance of it, become bound to the Prosecutor in 50 l. with Sureties to be approved by the Justice, before whom the Conviction was, to pay the Costs and Charges upon Oath within a Month after 'tis confirm'd, or a *Procedendo*.

A Licence to hunt, &c. and to seize Dogs, &c.

TO all to whom this Writing shall come, I R. B. of, &c. Lord of the Manor of W. send Greeting: Know ye, that I the said R. B. have given and granted, and do hereby give and grant unto R. P. of, &c. full Liberty and Authority to hunt at all seasonable Times hereafter, for the Space of three Years next ensuing, within the said Manor or Lordship of W. in the County aforesaid, and upon the Lands and within the Limits thereof, in the same Manner as I myself might or could do, without any Let, Denial, or Disturbance whatsoever: Giving likewise hereby full Power and Authority to the said R. P. and his Assigns, from Time to Time during the said Term, to seize all Dogs and Spaniels whatsoever, of any Person or Persons who are prohibited by the Laws or Statutes of this Realm to keep the same, and who shall during the Term above-mentioned hunt within the said Manor without his Consent, and the said Dogs to keep and detain to and for my Use. Given under my Hand and Seal, &c.

A Warrant to a Game-keeper, or any other Person, to search for Dogs.

To the Constable of, &c. and to R. P. of H. in the County of
Suffex, Yeoman.

Suffex, ff. **T**Hese are to require you, or either of you, to search in the Day-time, the Houses, Out-houses or Places of any Person or Persons within the Hundred of, &c. whom you shall have just Occasion to suspect, or be inform'd to keep Setting-dogs, Cony-dogs, or other Dogs, to destroy Partridges, Hares or Conies, not being
S 2 quall-

* 100 l. per Ann. Son of an Esquire; 100 l. by Ann. 22 & 23 Car. 2. c. 25. qualified * by Law to keep the same; and the Dogs which you shall find in the Possession of such Person or Persons, to seize and keep to and for the Use of the Lord of the Manor where they shall be taken: But you are not to search the Houses of any Person who hath an Estate of 100 l. by the Year, or who hath a Lease for any long Term of Years of the clear yearly Value of 150 l. by the Year, or of him who is the Son and Heir apparent to an Esquire, or other Person of higher Degree, or of those who are Keepers or Owners of Forests, Parks, Chases or Warrens; and you are to certify me with all convenient Speed, what you shall do in the Premises. Given, &c.

A Warrant to search for Hare, Partridge, &c. directed to the Constable, &c.

4 & 5 W. & M. c. 5. 25. Suffex, ff. **W**Hereas Complaint hath been made unto me, That the Game in, &c. hath been lately destroyed by idle and disorderly Persons of the Parish of, &c. These are therefore to require you forthwith to enter into, and search the Houses, Out-houses, and other Places, within your Parish, of all and every Person or Persons whom you shall justly suspect, or be inform'd to have any Hare, Partridge, Pheasant, Fish, Fowl, or other Game; and where you find any such, to apprehend the said Person suspected to have unlawfully come by the same, and to bring him before me, or some other Justice of the Peace for this County, to answer the Premises. And hereof fail not, Given, &c.

A Warrant to levy any Sum not under 5 s. or above 20 s. for every Hare, Partridge, Pheasant, Pidgeon, Fish, Fowl, or other Game found upon Search, as aforesaid.

To the Constable, &c.

4 & 5 W. & M. Suffex, ff. **W**Hereas T. B. of, &c. hath this present Day been lawfully convicted before me, for that he did not give a good Account how he came by a Brace of Hares, which were found in his House, in the Parish of A. upon Search made for that Purpose, and being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof to him, pursuant to the Statute in that Case made and provided: These are therefore to require you forthwith to levy the Sum of 20 s. by Distress and Sale of the Goods of the said T. B. which said Sum is by me ascertained for his said Offence, as forfeited for the same; and that you pay one Moiety to the Churchwardens or Overseers of the Poor of the Parish where the said Offence was committed, for the Use of their Poor; and for Want of such Distress, that then you certify me thereof, that such farther Order may be taken therein as the Law directs. And hereof fail not, &c. Com-

Commitment for Want of Distress.

To the Constable of, &c. and to the Keeper of the House of Correction at L. &c.

Suffex, ff. **W** Hereas you the said Constable, &c. were lately by my Warrant required to levy 20 s. on the Goods and Chatels of T. B. of, &c. by Distress and Sale thereof, which said Sum was by him forfeited, for that he did not give a good Account how he came by a Brace of Hares found upon Search in his House in the Parish of, &c. and not being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof unto him; for which Offence the said T. B. hath been lawfully convicted before me. And whereas you have informed me, That the said T. B. hath not sufficient whereon to distrain for the said Forfeiture: These are therefore to require you forthwith to apprehend the said T. B. and to convey him to the House of Correction in L. &c. and to deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to take the aforesaid T. B. into your Custody, and cause him to be whipt, and kept to hard Labour for the Space of three Weeks * next ensuing the Date hereof. Given under my Hand and Seal, &c.

One Justice
4 & 5 W.
& M. c. 23.

The like Proceedings upon the same Statute may be had against any of the Offenders following, viz. Those who are not qualified, and who keep,

* Not under 10 Days or exceeding one Month.

- | | |
|-----------------|---------------------------|
| 1. Bows. | 9. Nets. |
| 2. Coney-Dogs. | 10. Setting-Dogs. |
| 3. Ferrets. | 11. Snares. |
| 4. Grey-Hounds. | 12. Tunnels, or any other |
| 5. Hare-Pipes. | Instrument for destroying |
| 6. Hays. | Fish, Fowl, or any |
| 7. Low-Bells. | other Game. |
| 8. Lurchers. | |

They may be convicted before one Justice, for not giving a good Account how they came by the same, or producing the Party of whom they were bought, &c.

And no *Certiorari* is to be allowed, unless the Offender convicted become bound with Sureties in 50 l. to the Prosecutor, &c. The Form of which Bond and Condition you may see in Title *Deer-stealing*, for the Proceedings are the same.

Dogs.*A Warrant against one not qualified to keep Bows, Cony-Dogs, &c.*

To the Constable, &c.

Suffex, ff. **W**Hereas I am credibly informed, That T. B. of, &c. doth keep and use Grey-bounds, &c. (as the Case is) to destroy the Game, and that he is not qualified by the Law of this Realm to keep or use the same. These are therefore to require you forthwith to apprehend the said T. B. and to bring him before me, or some other Justice of the Peace for this County, to answer the Premises; and farther to be proceeded against according to Law. Given, &c.

The Qualifications are;

22 & 23
Car. 2. c. 25.

1. He must be Owner of a free Warren.
2. A Lord of a Manor.
3. Or he must have an Estate of Inheritance of 100 l. per Ann. either in his own, or in the Right of his Wife, or for Life.
4. Or a Lease for 99 Years of 150 l. per Ann.
5. Or must be the Son and Heir of an Esquire, or one of an higher Dignity.

A Warrant against one keeping Nets, being not qualified, viz. to search for them.

Suffex ff. **W**Hereas Complaint hath been made unto me, That the Fish in, &c. have lately been destroyed by some idle and disorderly Persons not qualified by Law, either as having a free Fishery, or being Owners thereof, or otherwise lawfully authoriz'd to fish in navigable Rivers; and that several Nets, Leaps, Pitches, and other Instruments and Engines, are kept in the Parish of, &c. for the Destruction of Fish, by Persons who are not Makers or Sellers thereof, contrary to the Statute in that Case made and provided. These are therefore to require you forthwith to enter into and search the Houses, Out-houses, and other suspected Places of Persons within your Parish, or of such who you are informed have any Nets or other Instruments for Destruction of Fish, and to seize the same where you shall find any such, and likewise to bring the Person, in whose House it shall be found, before me, or some other Justice of the Peace for this County, to answer the Premises. And hereof fail not, &c.

Dooz, breaking open. See Arrests, Warrants, Constable, Force lawful.

Probers. See Baggers.

Drunkens

Drunkenness.

MY Lord *Coke* tells us, That King *Edgar* permitting the *Danes* to inhabit here, they first brought excessive Drinking among us.

I believe this may be a true Account; for I find in the Reign of the preceding King, that he caused Drinking-Pots of Brals to be fixed to Posts near such Springs which were contiguous to the Highways, that Travellers might drink out of them, and be refreshed.

I only mention this, to shew the Temperance of that Age; but after the *Danes* came amongst us, the People soon left drinking *Water*, and in the very next King's Reign began to drink *Ale*; who made a Law, That if any Man quarrelled and beat another in an *Ale-house*, he should pay to the Value of 16*s.* in the Money then current: And this is the first Time that we find any Mention of an *Ale-house*, though 'tis certain Men drank to Excess before; and King *Edgar* himself made Laws against it, which (by the Way) were very old, at that very Time, when my Lord *Coke* told us the Laws against Drunkenness were very new. Inst. 101.

'Tis true, he mention'd King *Edgar*, but look'd no farther back than to the Statutes of King *JAMES*; by which 'tis enacted, That any Justice of Peace upon his own View, Confession, of the Party, or Proof of one Witness upon Oath, may convict any Person for Drunkenness.

Being convicted, he is to pay 5*s.* for every Offence to the Churchwardens of the Parish where the Offence is committed within one Week after Conviction; which if he neglects or refuses, the same may be levied upon his Goods by Warrant from one Justice, before whom he was convicted; and if not able to pay it, then he is to be put into the Stocks six Hours for every Offence.

If he is convicted the second Time, then he may give Bond in 10*l.* viz. Two Sureties, to be of the Good Behaviour, or be committed.

The Prosecution must be within six Months after the Offence.

The inferior Officer neglecting to levy the Penalty, forfeits 10*s.* to be levied and disposed as the Penalty it self.

This is the Substance of the Statutes, 4 *Fac. cap. 5.* & 21 *Fac. cap. 7.* the former Statute being made perpetual by the later.

Drunkenness.

The Prosecution upon the first of these Laws was to be, and is still, before Justices of the Peace in their Sessions by Way of Indictment, where the Offender must be convicted: But by the last Statute, one Justice hath Power to convict this Offender, as above-mentioned; which as to this Matter, was all the Alteration which was made, for the Penalty is the same as before, so likewise is the Manner of levying it.

Drunkenness is a sufficient Cause to remove a Magistrate.

The first Conviction within six Months after the Offence.

To the Constable of the Hundred of L. and to the Churchwardens of the Parish of H. in the said County.

Suffex, ss. **W**Hereas J. S. of the Parish of H. in the said County, Blacksmith, was on this present Day, upon
 * Upon View of the Justice, or upon Confession, or Oath of one Witness. *due * Proof, convicted before me for being drunk on the 19th Day of August last past, in the said Parish: These are therefore to require you to demand the Sum of 5s. of the said J. S. for the Use of the Poor of the said Parish; which, if not paid into the Hands of the Churchwardens of the Parish aforesaid, within one Week next ensuing, that then you levy the same upon the Goods and Chattels of the said J. S. by Distress and Sale thereof, rendring unto him the Overplus: And if the said J. S. shall not be able to pay the said Sum, and if no Distress can be taken, that then you set him in the Stocks, there to remain for the Space of six Hours. Given under my Hand and Seal this 22d Day of August, &c.*

The second Conviction for Drunkenness within six Months after the Offence.

To the Constable of, &c. and to the Keeper of the Gaol for the said County.

Suffex, ss. **W**Hereas J. S. of the Parish of H. in the said County, Blacksmith, was upon the 22d Day of August last, lawfully convicted before me for Drunkenness on the 19th Day of this instant August, in the Parish aforesaid: And whereas the said J. S. was in like Manner this present Day the second Time convicted before me for being drunk in the said Parish on the 23d Day of August last: These are therefore to require you, or one of you, to bring the said J. S. before me, or some other Justice of the Peace for this County, to be bound with Sureties to his Majesty in one Recognizance or Obligation of 10l. conditioned to be from henceforth of the Good Behaviour, according to the Form of the Statute in that Case made and provided; which if he shall refuse to do, that then you convey

convey him to the said Gaol, and deliver him to the Keeper thereof, together with this Warrant: Commanding you the said Keeper to receive the said J. S. into your Custody, and him safely to keep until he shall be bound with Sureties as aforesaid. Given, &c.

The Recognizance.

Suffex, ss. **M**emozand' quod primo die Septembris, Anno Regni, &c. venerunt coram me R. B. Ar' un' Justiciar' ont' Dom' Regis ad Pacem in Com' pred' conserband' assign' T. P. de H. in Com' pred' Taylor, & J. O. de eadem, Yeoman, ac J. S. de eadem, Blacksmith, & recognoverunt se debere dict' Dom' Reg', viz. quilibet manucaptor in quinque libris separatim & pred' J. S. in decem libris bone & legalis monete Angliæ de bonis & catallis terris & tenementis suis fieri & levare ad opus dict' Dom' Regis hered' & successorum suorum si defecerit in Conditione infra script.

Capt' & cogn' die & Anno
supradictis coram me,

R. B.

THE Condition of this Recognizance is such, That if the above-bounden J. S. shall personally appear before his Majesty's Justices of the Peace at the next General Quarter-Sessions of the Peace to be holden at L. for the County of S. and in the mean Time shall be of the Good Behaviour, and shall not depart from the Court without Leave thereof, then this Recognizance to be void, otherwise to be in full Force.

Indictment for that he was *Communis Poculator* (Anglice a common Drunkard) and *Communis profanus jurator & perturbator pacis & assiduus domorum Tiplatoriarum frequentator*, (Anglice a Frequentor of Tippling-houses,) this is too general and loose.

Indictment against a Common Drunkard.

Suffex, ss. **J**ur' &c. quod J. S. de H. in Com' pred' **fa** Judgment
ber Ferrarius per spacium sex mensium jam ult' s. s. for e-
timo elaps' apud H. predict' in Com' pred' fuit & very Of-
adhuc est ebriosus & diversis diebus & temporibus infra spacium fence, and
pred' apud Paroch' pred' in Com' pred' ebrius fuit, ac quod bo. nd to
idem Good Beha-
viour; if
not able to

pay s. s. for every Offence, then he must be put in the Stocks six Hours for every such Offence. Prosecution must be within six Months after the Offence. 4 Jac. c. 5.

Eggs.

idem J. S. diversis temporibus pzed' apud Paroch' pzed' in ebrietate sua vi & armis, scil' baculis gladiis & cultellis in quendam T. P. & alios subditos Dom' Regis nunc insultum & Afrariam fecit & Pacem dict' Dom' Reg' ad mandatum Constabularii Ville pzed' custodire aut observare recusabit in magnam Perturbationem subditorum pzed' & contra Pacem, &c.

Note, These Statutes do not take away any Jurisdiction which is lodged in the Ecclesiastical Courts, *pro Reformatione Morum.*

Aliter.

Sussex, ff. **J**UR', &c. quod J. S. nuper de, &c. quarto die Maii Anno, &c. & multis diebus & vicibus tam antea quam postea apud H. in Com' pzed' & alibi in diversis aliis locis infra Com' pzed' fuit & adhuc est communis Voculatoz (Anglice, a Drunkard) & communis Perturbatoz Pacis dict' Dom' Regis in malum Exemplum aliorum dict' Dom' Regis subditorum, & contra pacem dict' Dom' Regis Cozon' &c.

Eggs.

OF any Wild-fowl usually eaten, if taken from the Nest, or destroyed between the first of *March*, and the last of *June*, Imprisonment for a Year, and forfeits for every Crane's Egg, or Bustard's Egg, 20 *d.* for the Egg of a Bittern, Heron, or Shovelack, 8 *d.* For the Egg of a Duck, Teal, or other Wild-fowl, 1 *d.* 25 *H. 8. cap. 11.*

Taking or willingly Destroying Eggs of Pheasant, Partridge, Swan, Imprisonment for three Months, unless he pay to the Churchwardens of the Parish where the Offence was committed, or Party taken, to the Use of the Poor, 20 *s.*

Conviction is to be by Confession, or Oath of two Witnesses, before two Justices where the Offence is done, or the Party taken, 1 *Fac. cap. 27.*

Egyptians.

Egyptians. See Rogues and Vagabonds.

Suffex, ff. **J**UR', &c. quod J. R. & R. J. quilibet eorum etas-
tis quatuordecim Annorum & amplius erissen'
quinto die Maii, Anno, &c. apud H. pzed' in
Com' pzed' seiplos appellaverunt Egyptianos, & per eorum lo-
cutiones & alias gesturas seiplos quibusdam vagabund' qui com-
munit' vocant' Egyptians, associaber' & sic apud H. pzed' in
Com' pzed' a pzed' quinto die Maii Anno supradicto usq; quin-
tum diem Junii tunc ppor' sequen' remanserunt & continuabe-
runt in dict' Domini Regis nunc & Legum suarum Contemp-
tum, & contra Pacem dict' Dom' Regis Cozon' & Dignitat'
suas, & contra formam Statuti, &c.

If above fourteen Years of Age, and shall call himself an
Egyptian, or shall be in Company with those who disguise
themselves in Habit, or otherwise like *Egyptians*, and continue
in *England* one Month, 'tis Felony without Benefit of Clergy.
1 & 2 Phil. & Mar. cap. 4.

He who transports them, forfeits 40 l. between King and
Prosecutor.

Escape.

THIS is where one is arrested, and afterwards is at Li-
berty, not being delivered by due Course of Law; and
'tis either Negligent or Voluntary; but in Trespass, or any
Offence not Treason or Felony, there is no Difference whether
the same is voluntary or not, for in both Cases the Officer is
finable.

By a Stranger.

If a Stranger apprehend a Felon, or one suspected, and de-
livers him to another, who suffers him to go at large, 'tis an
Escape in both; for the first Man ought to have deliver'd him
to the Constable.

For Murder, the Township shall be amerced if the Murderer
escape *tempore diurno*, though it was committed in the Town,
Field, or in a Lane, but then there should be Complaint made
to a Justice of Peace.

By

By Negligence in Officers.

To bail one not bailable by Law, *pro defectu Scientie*, is a negligent Escape.

A Gaoler suffering a Prisoner to go abroad, though he return, 'tis a negligent Escape, and finable, for he ought to keep him in *arcta Custodia*; yet *per Hale Ch. Justice*, if after a negligent Escape, and before the Gaoler is punished, he take the Prisoner upon fresh Suit, he is excused. 3 *Rep. Rigway's Case*.

If the Gaoler is insufficient, the Sheriff must answer for these Escapes, because 'tis a Civil Action; but 'tis otherwise where the Offence is Criminal.

The Punishment is aggravated by the Proceeding against the Party escaping; for if attainted, and afterwards he escapes, 'tis 100 *l.* Fine; if indicted, 5 *l.* Fine; if not, then 'tis fineable at Discretion.

Voluntary.

1. Where 'tis Felony.

1. The Act must be Felony at the Time of the Escape, otherwise 'tis but fineable.
2. There must be a legal Commitment.

After a Pardon for Murder, but pending an Appeal, the Prisoner was suffered to escape; 'tis Felony in the Gaoler. *Plowd. 476. B.* So it is likewise to suffer a Felon wilfully to escape, or to bail him, for he hath no Power to take Bail.

'Tis the same Crime in a Justice to take a Felon out of Gaol without Bail, or suffer him to go at large without Bail or Commitment, who confesses a Felony before him.

'Tis Felony likewise in a Constable to suffer a Felon to destroy himself.

He who suffers the Escape, must be punished for the same Crime for which the Party escaping stood committed.

Dyer 95.
pl. 60.

A Man was put in the Stocks upon Suspicion of a Felony, and another lets him go; this was held to be Felony at Common Law, altho' the Party was never indicted.

Leon. 137.

As to the Amerciament of a Vill, where a Felony is done, and the Offender escapes, if it is in the *Day-time* the Vill is answerable; but if in the *Night* 'tis otherwise. As for Instance; it was found before the Coroner, That B. on the Tenth of *January*, 30 *Eliz.* struck another about Four in the Afternoon, of which Stroke he died at Eight in the Evening of the same Day, and the Offender escaped, for which the Town of *Green* in *Sussex* was amerced; but it was discharged, for the Man died in the Night, and it was not Felony before he was dead; which being in the *Night*, the Town is not chargeable for the Escape.

If

If a Felon escapeth after Condemnation, and is retaken, upon Confession or Proof that he is the same Person, he shall be executed. Poph. 131.

Voluntary. } He who wounded another is taken by a Constable and suffer'd to escape, the wounded Man dies within a Year and a Day, 'tis only finable. 3 Leon. 207.

A Man is taken for Manslaughter *per infortunium*, or *se defendendo*, and suffer'd to escape, 'tis not Felony in the Officer, but finable.

These Escapes must be presented before the Offender shall be compelled to answer.

Justices of the Peace have Power in Sessions to enquire of Escapes of Felons. 1 R. 3. 3.

By a late Statute, the Sheriff may commit his Prisoner to the Gaol where he keeps Prisoners for Debt, and not to the common Gaol of that County where the Offender was taken, but subject to the same Restrictions, Regulations and Penalties, as if he had been committed to the common Gaol; and if the Party escape out of the Place, the Sheriff shall be answerable as in other Escapes.

But the Offender may be retaken, even upon the Lord's Day, by Vertue of a Warrant from a Judge, upon Oath made before any Person commissioned under Seal of the same Court in the County, and the Oath duly filed, as if such Oath had been made before the Judge himself.

An Indictment against a Gaoler for a Voluntary Escape of one suspected of Felony.

Suffex, ff. **J**ura, &c. quod cum quidam S. J. nuper de H. in Com' pzed' Spinkster, vicesimo die Augusti, Anno Regni, &c. apud H. pzed' in Com' pzed' * pzo * Or as the Offence is, if for Murder, then suspicionem cuiusdam felonie per ipsam fore perpetrat' captus & arrestatus fuit, viz. p furatione unius bacce colozis nigri pretii trivm libzarum felonice p eundem S. J. ut dicebatur abducte, & postea coram R. B. uno Justiciar' dict' Dom' Regis ad pacem & murdro in Com' pzedict' conserband' assign' ductus fuit & superinde die per ipsum Anno & Loco supradictis cuidam J. L. custodi Gaole dict' Dom' A. B. apud Regis in & p Com' pzed' apud H. in dicto Com' S. per quoddam H. pzed. in pceptum dicti Justiciarii idem S. J. traditus & commissus super quem fuit ad salvo & secure custodiend' in Gaola pzed' donec idem S. J. dam C. D. inde legitimo modo deliberatus foret pzetat' tamen J. L. tunc fieri & perpetrari super apud H. pzed' in Com' pzed' eundem S. J. ad tunc & ibidem in Evidentia si the posset' If the Evidence is plain, then dictis Gaola & custodia existen' ad tunc & ibidem evadere & ad say, fact' & largum ire voluntarie & felonice permisit contra pacem dict' perpetrat.

An

An Indictment against a Constable for the Escape of a Felon committed to him.

Suffex, ff. **J**UR', &c. quod cum T. P. nuper de H. in Com' S. Taylor, vicesimo die Augusti, Anno Regni, &c. apud H. pzed' in Com' pzed' captus & arrestat' fuit pzo suspitione felonie per ipsum foze perpetrat' viz. pzo furatione quinque libraz in pecuniis numeratis de bonis & cattallis cujusdam W. G. de H. pzo in Com' pzo & p eadem feloniam pzed' T. P. Die, Anno, & Loco supradict' † commissus fuit J. O. de L. in Com' pzed' Yeoman, adtunc Constabulario ville de L. pzed' eristen' p pzeceptum R. B. Ar' un' Justiciar' dict' Dom' Regis ad pacem, &c. cui quidem J. O. p pzedict' pzeceptum mandat' fuit pzetat' T. P. salvo custodire & ipsum ad Gaolam sive Prisonam Dom' Regis apud H. in Com' pzedict' conbehare sive adducere & adtunc & ibidem tradere custod' Gaole sive Prisonae pzedict' ad salvo & secure custodiend' donec inde legitimo modo deliberat' fozet pzedict' tamen J. O. & quidam R. D. nuper de H. in Com' pzed' Labourer, pzetat' T. P. sic in custodia pzed' J. O. eristen' p feloniam pzed' 21 Augusti Anno 13 supradicto apud H. pzed' in Com' pzed' * evadere & ad largum ire voluntarie & felonice permiserunt contra pacem dict' Dom' Regis Cozon' & Dignitat' suas, &c.

† Debito modo.
1 Vent. 179.

* If 'tis for a negligent Escape, then say, pro defectu bonae & diligentis Custodiae evadere, &c. And instead of Voluntarie, say, Negligenter, and leave out felonice.

Cro. Eliz. 103. It is necessary to set forth where the Party was taken, because upon Not Guilty pleaded to this Indictment, the Venue must come from the Place where the Offender was taken, as well as from that Place where he escaped.

Cro. Eliz. 152. 'Tis necessary likewise to shew for what Felony he was taken, because the Constable may traverse it; and when it was committed.

My Lord Coke, in his Exposition upon the Statute de Frangentibus Prisonam, is of Opinion, That the Gaoler shall not answer for a voluntary Escape until the Prisoner be attainted, 2 Inst. 592.

Escheat.

THIS is a casual Profit which happens to the Lords by Chance, and unexpected, and it is usually by one of these Means:

1. Aut quia } Suspensus per Collum.
 } Abjuravit Regnum.
 } Utlagatus est.

Eschap.

Estray.

THIS is where any Beast cometh into a Lordship, and none knoweth the Owner; in such a Case it shall be seized to the Use of the King, or of the Lord who hath a Title to it, either by Grant or Prescription.

If the Lord makes Proclamation in some Markets near him, the Property shall be vested in him, if the Owner doth not come and claim it within a Year and a Day after the Seizure.

Bracton tells us, That *olim fuit inventoris de jure naturali*; but that now 'tis the King's, *jure Gentium*; and this Prerogative is granted to many Subjects; so that now it belongs to the Lord of the Franchise where found.

Adjudg'd, That at any Time within the Year the Owner may ^{2 Salk 686.} seize an *Estray*, where-ever he finds it, without telling the Marks or proving the Property, but then he must tender *Amends* which he may do generally without mentioning any particular Sum, because the Owner of such *Estray* is no Wrong-doer, and it is impossible for him to know how long the *Estray* had been in the Keeping of another Person, or how much would make him Satisfaction.

Estreats.

THESE are the Extracts of Fines, Forfeitures and Amercements, taken out of the Rolls of the Clerk of the Peace; of which he makes two Parts, and delivers one to the Sheriff, the other to the Barons of the *Exchequer*.

Estreates of the Penalties for shooting in Guns, must be sent into the *Exchequer* by the Justice who examined the Matter.

The Sheriff levying the King's Debt, without shewing the Party the *Estre*at under the Seal of the *Exchequer*, must be fined, and pay treble Damages to the Party.

Issues *estreated* shall not be levied upon any other Person than upon him who by the *Estre*at ought of Right to be charged, upon Pain that every Clerk writing such *Estre*at, and causing it to be executed, and the Officer, shall forfeit five Marks to the King, and as much to the Party grieved, to be recovered by Action of Debt, &c. 27 *Eliz. cap. 7.*

The Queen's Moiety of 5*l.* forfeited by him who shall be a Badger contrary to the Statute of 5 *Eliz. 11.* which see in Title *Badger*.

By the Statute of 2 & 3 *Pb. & M. cap. 8.* Stewards of Leets have Power to fine those who do not work on the Highways; and

and within six Weeks after *Michaelmas* they must deliver Indentures of those Fines estreated; one to the Bailiff or High Constable of the Liberty, the other to the Constable or Churchwarden of the Parish where the Offence was committed.

In Default of Presentment at Leets, the Justices, in their Sessions, shall fine these Defaulters; and then the Clerk of the Peace must deliver indented Estreats under his Hand and Seal as aforesaid, which shall be a Warrant to levy, &c.

Evidence. See Felonies.

THE Witnesses, &c. must be bound in a Recognizance to appear and give Evidence at the next General Gaol-delivery: if they refuse, they may be committed, or bound to Good Behaviour.

The Lord *Preston* was committed by the Court of Quarter-Sessions, for refusing to be sworn, and give Evidence to the Grand Jury on an Indictment for Treason; 'tis a great Contempt of the Court; but the safest Way had been to fine him, and then to have committed him till he had paid the Fine.

The Wife can be no Witness against her Husband, unless she is the Party grieved; in such Case it hath been allowed.

- Hutt. 146. In my Lord *Audley's* Case, which was for being accessory to a Rape of his Wife, she was admitted as Evidence against him; and then a Distinction was made between the Case of a Common Person, between Party and Party, and the Case between the King and the Party upon an *Indictment*; in the first of which Cases she may not be a Witness, and in the last she may: But
- H.P.C. 263. my Lord *Hale* was of another Opinion, viz. That in Felonies neither the Wife nor her Examination shall be used for or against her Husband; and that Distinction in my Lord *Audley's*
- Raym. 1. Case hath since been denied to be Law.

But yet a Wife *de facto*, as an Heiress taken away, and by Threats prevailed on to marry the Man, shall be a good Witness against him; and if convicted upon her Evidence, shall be hang'd. 1 Vent. 143.

Med. Cases
216.

One *Johnson* was indicted for Felony, and *Browning* and his Wife were Evidences to prove it at the Trial, but *Johnson* was acquitted, and afterwards he brought an Action against *Browning* for a malicious Prosecution; in which Case it was necessary for him in his Defence to prove, that a Felony was committed, for otherwise he had no probable Cause to prosecute *Johnson*; and there being no Body present but he and his Wife when the Felony was committed, and because she could not be a Witness for her Husband in this Action brought against him: Holt Ch. Justice allowed, That the Oath which she had made

made on the Trial of the Indictment might be given in Evidence to prove that a Felony was committed.

An Infant may be a Witness even against his Parents indicted for Witchcraft. *Dalt.* 366.

One attainted of Perjury, tho' pardoned, or of Forgery or Conspiracy, is not to be a Witness; yet the Justice may bind such Witnesses to give Evidence, but he is to inform the Judge of their Credit. Yet one convicted of Felony, and pardoned, is a Witness, for the Pardon takes away both *pœnam & reatum*. *Godb.* 288. *Raym.* 369. 1 *Vent.* 349. So likewise if burnt in the Hand. *Style* 388.

In an Indictment for a Cheat, by imposing on R. B. a Quantity of Beer mixed with Vinegar and Grounds of Coffee for Port Wine, one of the Defendant's pretending himself to be a Broker, and the other a *Portugal* Merchant; and Chief Justice *Holt* allowed R. B. to be a Witness to prove the Cheat; for in such Cases, no Body else is so proper as he who is cheated: In an Information for a Cheat, the Fact was thus: *ff.* The Defendant had a Promise from his Mother-in-Law of a Note of 10*l.* and by some Contrivance he got a Note of 100*l.* Adjudg'd, that the Mother-in-Law could be no Evidence, she being concerned in the Consequence of the Suit; for in Cases of Forgery or Perjury, the Party whose Interest is defeated or prejudiced by the Deed, is no Evidence to prove the Fact.

A Person convicted for publishing a Libel, and another for singing a Ballad against the Government, and both sentenced to the Pillory, were Witnesses to a Will: And upon an Appeal to the Delegates, they were allowed to be good Witnesses, because the Infamy arises from the Nature of the Crime, and not from the Judgment; but in this Case, neither of the Offences are infamous, either by the Canon or Civil Law (and 'tis upon these Laws that they were now to judge) though it is otherwise by the Common Law. *Levinz.* 3 *Part*, 426.

But a Person duly set in the Pillory, is not allowed by our Law to be a Witness. *H. P. C.* 263.

In an Information for a Libel against the Government, the Attorney General offer'd in Evidence some Depositions taken before a Justice of Peace concerning the Fact, the Witness being dead; but it was not allowed by the Court, because such Depositions may be used only in Evidence in Cases of Felony, by the Statute 1 & 2 *Ph. & M. cap.* 13. and therefore shall not be extended any further.

If a Witness is not able to travel, the Justice may excuse his Personal Appearance, and certify his Examination at the next Assizes.

If a Felon confesses the Fact, he may give Evidence against another, as well to the Jurors, who shall then enquire thereof on the Behalf of the King, as also to those who shall pass upon the Trial of the said *T. P.* for the same.

In the Case of the Regicides, it was resolved, That any of the King's Counsel might privately manage the Evidence for the King before the Grand Jury, in Order to the Finding the Bill, because the King's Counsel are the only Prosecutors in his Cases.

In Treason working Corruption of Blood, or in Misprision of such Treason, the Party accused is not to have a Note of the Witnesses Names against him, but they must be two lawful Persons, and both to the same Overt-Act of the same Treason: And therefore, If two or more distinct Treasons are alleged'd in one Indictment, one Witness to one, and another to another Treason, they shall not be esteemed two Witnesses.

7 W.3. c. 3.

And no Evidence shall be admitted to an Overt-Act, which is not expressly laid in the Indictment.

The Accused may make his Defence by Witnesses upon Oath, and may have the same Process to compel them to appear, as is usually granted for Witnesses against him.

H.P.C.193,

264.

Keyl.18,19.

The Confession of a Criminal to a private Person or to a Magistrate out of Court may be given in Evidence against the Person confessing, but not to be used against another; and where the Confession is used against him who confesses, it must be taken altogether as well that Part which makes for him, as that which makes against him.

By the Statute of 4 Jac. 1. cap. 1. Felonies committed by *Englishmen* in Scotland, are to be tried by a Jury of *Cumberland, Westmorland* or *Northumberland*; and the Felon shall be admitted to have his Witnesses examined upon Oath, &c. which my Lord Coke tells us, is a good Precedent for the Discovery of Truth, and to inform the Consciences of the Judge and Jury; for *Furor creditur in judicio*; and that there is not so much as *Scintilla juris* against the Examination of such Witnesses upon Oath. But notwithstanding his Opinion, it was never allowed in Treason before the Statute of 7 W. and the Practice was still otherwise in all other Felonies.

1 Annæ
cap. 9.

But now by another Statute, any Person produced as a Witness on the Behalf of a Prisoner upon Trial for *Treason* or *Felony*, must be upon Oath to speak the Truth, the whole Truth, and nothing but the Truth; and if convicted of wilful Perjury, shall suffer such Punishment as by the Law may be inflicted on such an Offender.

As to what Evidence shall maintain the Indictment, these Things are to be observed:

1. If the Felony is laid to be committed one Day, the Jury may find the true Day, and the Forfeiture shall relate to that Day.

2. If 'tis laid to be done in a certain Place, the Evidence may be of the Fact in another Place; but then it must be in the same County.

3. If the Indictment and Evidence differ in the *Manner* of the Death, then it doth not maintain it; as if a Man is indicted for poisoning, and the Evidence is of Stabbing: But where they agree in Substance, 'tis otherwise; as if the Indictment is for poisoning with one Sort of Poison, and the Evidence is of another.

4. Indictment that *A.* gave the mortal Wound, and that *B.* and *C.* were *present and abetting*; the Evidence was, That *B.* gave the Wound, and the others were abetting.

5. So an Indictment against *B.* as Accessary to *D.* and *R.* and the Evidence is only, That he was Accessary to one of them.

6. So for Murder of *Malice forethought*, and the Evidence is of Malice only in *Law*; as killing an Officer, or without Provocation.

A Warrant to summon a Witness concerning a Felon.

To the Constable, &c.

Suffex, ff. **W** Hereas I have been informed, That *T. B.* of, &c. was lately robbed at, &c. and that *J. O.* of, &c. is a material Witness to prove by whom the said Robbery was committed: There are therefore to require you to cause the said *J. O.* forthwith to come before me, or some other Justice of the Peace for this County, to give such Information and Evidence as he knoweth concerning the said Offence, that such farther Proceedings may be had therein as to Justice doth appertain. Given, &c.

Evidence { Maintaining
 or
 Not maintaining } the Indictment.

Indictment of a Felony 30 *Novemb.* and the Evidence is of another Day; the Jury may find the true Day, and the Forfeiture shall relate to it.

The Felony is laid to be committed at such a Place, and the Evidence proves the Fact at another Place in the same County, 'tis well enough.

On an Indictment for High Treason, Evidence may be given of the Fact at any Time before, or after the Time laid in the Indictment, because 'tis only a Circumstance and Form; for some Day must be alledged, and 'tis not material what Day; but it must not be after the Indictment found; neither is the Evidence tied up to the Place, so it be in the same County; and thus it is in all criminal Cases.

Of poisoning with one Kind of Poison, and the Evidence is of another; or killing with one Weapon, and the Evidence is

Examination.

of another; this maintains the Indictment, for it agrees in Substance.

That *P.* gave the Wound, and that *J.* and *R.* were abetting; and the Evidence, That *O.* gave the Wound, and that *J.* and *R.* were present with another, and abetting, &c. 'tis sufficient.

Indictment as Accessary to two, and the Evidence proves him Accessary to one, 'tis sufficient.

For Murder, *ex malitia premeditata*, the Evidence was of Malice implied, as killing an Officer in Execution of Justice, &c. it maintains the Indictment.

Upon the Statute of Stabbing the Evidence was, That the Deceased gave the first Stroke, 'tis sufficient to maintain the Indictment for Manslaughter.

But if the Indictment and Evidence differ in the Manner of the Death; as if it be for poisoning, and the Evidence is of Stabbing; that will not maintain the Indictment.

Feme Covert.

A *Feme Covert*, or Infant, being a Witness, cannot be bound in a Recognizance to appear at Sessions; and if she is bound with her Husband, 'tis void as to her; but they may be bound by Sureties; and if a *Feme Covert* cannot find Sureties, she shall be committed.

Examination.

* If a small Felony, then to the Sessions.
† Tho' the Party is dead; but then the Justice's Clerk should be sworn to the Examination, or the Justice himself.

THE Justices may examine Witnesses upon Oath; and by Vertue of the Statute of 2 & 3 *Ph. & M.* they may examine the Felon likewise, but not on Oath. *H. P. C.* 292.

This Examination must be in Writing, and it must be * certified to the next Assizes, or else the Justice may be fined by the Judge.

It may be given in † Evidence at the Trial, but 'tis not sufficient to convict, unless the Accused confess at the Trial; yet *Dalton* mentions a Conviction upon it without any further Evidence.

And yet in the Case of *Tony Philips* and *Stubbs*, who were indicted for High Treason, it was resolved by all the Judges, That if a Traitor is examined before a Justice of Peace, or Privy Counsellor, and confesseth the Treason, and should afterwards deny it at his Trial, yet two Witnesses, who can prove such Confession, are good Evidence against the Party himself, who made it at his Examination, but not against any other Person whom he then accused; and that in such Case there needs not two Witnesses to prove the Criminal guilty of Treason.

So in my Lord Morley's Case it was held, That if Witnesses examined before the Coroner were dead, or unable to travel, and Oath made thereof, such Examination might be read, the Coroner making Oath, That they are the same, and not alter'd.

Several Persons conspir'd, &c. to pull down Enclosures, and to provide Armour, &c. and to go to London and join with more; and this they confessed on Examination: The Question was, Whether they should be arraigned for this Offence, because they had confessed it already? And it was held they should, and that their Confession before the Arraignment might be given in Evidence against them. If upon Examination the Felon confesseth the Fact, the Justice should take his Name subscribed to his Confession. 2 And. 67.

And such Confession may be given in Evidence with an Oath, H.P.C. 264. before whom it was made.

Examination taken in one County, may be certified in another.

The Felon may be examined before he is committed, but not upon Oath, because *nemo debet seipsum accusare*.

His Examination, as well as that of the Witnesses, must be certified by the Justice to the next Assizes.

The Form of the Examination of the Felon.

THE Examination of T. R. &c. taken before me, H. P. Esq; one of his Majesty's Justices of the Peace for the County of S. on the 31st Day of March, &c.

This Examinant saith, &c.

The Examination of the Witnesses must be taken severally, and upon Oath, thus:

The Examination of R. B. of, &c. taken upon Oath before me, H. P. Esq; ut prius.

Execution. See Judgments.

IF Execution is respited by the Judge for six Weeks, and the Time expires, and then the Sessions is adjourn'd, and the Judge grants a farther Respite, 'tis good; though by the Adjournment, the Commission of Gaol-Delivery is determined. Dyer 205.

Extortion.

IS an Offence, where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due: And in a large Sense, 'tis where any Person is oppressed by an extorting Power, or under a Pretence of Right. 1 *Inst.* 368. b.

Archdeacon, { Is guilty of this Offence, taking more than his Fees by Colour of his Office, or any Fees or Reward for Expedition, or exacting an Oath, or any other undue Thing.

Attorney, { Taking 1 l. 3 s. of his Client *Extorsive contra formam Statuti*, which must be the Stat. of 3 *Fac. cap.* 7. which gives the Client Costs and treble Damages, where an Attorney demands by his Bill more than his due Fees and Disbursements; the Question was, Whether this is to be recovered by Action or Information; and by some Opinions an Information will lie. *Sid.* 434.

{ Of a Hundred, taking 50 s. *colore Officii*, without expressing particularly for what: After Verdict this was held sufficient, by Reason of the Words *colore Officii*; but it had been otherwise upon Demurrer. *Sid.* 91.

Bailiff, { Bailiff to Sheriff, indicted at Sessions for taking 20 s. of T. P. *Extorsive colore Officii*, was committed, and pleaded, and was tried the same Day in Sessions and convicted, and upon a Writ of Error the Judgment was reversed, because a Man cannot be indicted and tried at the same Sessions. *Cro. Car.* 438. *Jones* 379, 380. But the Damages are to be recovered by Action.

{ Taking more than 4 d. for an Arrest, forfeits treble Damages to the Party grieved, and besides 40 l. between King and Prosecutor, *per* 23 H. 6. *cap.* 10. But the Jury must find the single Damages, and then the Justices may treble them. *Sid.* 91.

Clerk of Assize. { Information against him for taking more than his Fees, was ordered to be tried at Bar. *Sid.* 420.

Taking

Churchwardens, { Taking *colore Officii sui falso corrupte & extorsive* of T. P. a Silver Tankard for the Place of a Gallery-keeper in the Church; the Court would not quash the Indictment, but ordered it to be tried. *Sid.* 307.

Coroner, { Taking more than his Fees, or refusing to view the Body before he had 6 s. 8 d. for himself, and 2 s. for his Clerk, he was committed, &c. 3 *Inst.* 149.

Gaoler. — Taking more than his Fees.

Justice of the Peace. { He was convicted of Extortion, fined 1000 Marks, committed during the King's Pleasure, bound to his Good Behaviour for a Year, and ordered to acknowledge his Offence publicly at the next Assizes, and turned out of Commission.

Ordinary. { 'Tis Extortion in him to take any Thing for an Admonition or Probate of a Will, where the Goods of the Deceased are not of the Value of 10 Marks, or to take more than 3 s. 4 d. where the Goods exceed not 30 l. or to take more than 6 s. 8 d. when the Goods exceed 30 l. and are not of 40 l. Value; or to take above 10 s. when the Goods amount to 48 l. or above, or any Thing for a Mortuary where 'tis not payable by Custom. 21 H. 8. *cap.* 6.

Sheriff, { Taking more than his Fees, or any Thing of a Constable for bringing a Felon to Gaol.
{ 'Tis Extortion in him to take 60 l. to execute a Judgment in Dower, 1 *Keb.* 743. but if he is acquitted, no new Trial shall be had. 2 *Keb.* 404.

Spiritual Court. { Extortion there, is punishable at Common Law. *Palm.* 318.

Two Men may be indicted jointly for an Extortion, because 'tis a Crime at Common Law, but two cannot be jointly indicted for exercising a Trade, not being Apprentices, &c. because 'tis that which makes the Offence, and therefore of Necessity it must be several.

Indictment against a Coroner for taking Excessive Fees.

The same
Form may
serve a-
gainst a
Bailiff, mu-
tatis mu-
tandis.

Sussex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Gene-
rosus 30 die Decembris, Anno Regni, &c. unus
Coronator' dicti Dom' Reg' in & pzo dicto Com'
adtunc existens cepit pzo feodo suo 30 s. de quodam T. P. in
dicto Com' Generoso, in & pzo executione Officii Coronatoris
pzed' super visum corporis A. C. nuper de H. pzed' qui quidem
A. C. vicesimo nono die Decembris pzed' apud H. pzed' per
quandam carucam in & super caput ejus curren' per infortunium
occisus fuit, in magnum dicti Dom' Reg' contemptum & con-
tra pacem & Coron' suas, &c.

Against a Bishop's Register.

31 H. 8 c.
& Fine 10 l.
and Impri-
sonment.

Sussex, ff. **J**UR', &c. quod T. B. de L. in Com' pzed' Gene-
rosus, 3 die Decembris, Anno Regni, &c. ad-
tunc Registrarius reverendi in Christo Patris
T. tunc permissione Divina Cicestrensis Episcopi existens apud
L. in Com' pzed' coloze Officii sui falso corruptive & extorsive
cepit de quodam J. O. de L. pzed' Tonsoze 40 s. legalis monete
Angliae pzo feodo ipsius T. B. pzo scriptione probationis Testa-
menti sive ultime voluntatis cujusdam T. M. qui quidem
T. M. apud L. pzed' infra Diocesin dicti T. Epi' primo die
Novembris, ult' pterit' moriebatur ubi rebera dictum testa-
mentum adtunc & ibidem allatum fuit dicto Registrario per
pzed' J. O. in Pergamena scriptum & ubi omnia bona & catalla
jura & credita dicti T. M. tempore mortis sue pzed' non excede-
bant summam 5 l. & ubi etiam tota scriptura probationis Testi-
menti pzed' per pzedatum Registrarium sic ut pzedetur fact'
non continebat in se 30 lineas quarum queque linea erat des-
cem pollicium in longitudine in magnum dicti Dom' Reg' con-
temptum ac contra formam Statuti, &c.

Against Extortion in a Gaoler.

Sussex, ff. **J**UR', &c. quod J. O. de paroch' H. in Com' pzed'
per T. R. Conitabularium ejusdem Paroch' vir-
tute cujusdam Warranti sub manu & sigillo
R. B. adtunc & adhuc un' Justiciar' Dom' Reg' ad pacem
pzo Com' pzed' conserband' assign' & eidem T. R. direct' cap-
tus fuit 30 die Decembris, Anno, &c. pzo suspitione cujusdam
felonie per ipsum J. O. perpetrat' fuisse & per ipsum R. B. eo-
dem die & anno commissus fuit J. L. custodi Gaole pzed' Dom'
Reg'

Reg' Com' pzed' sub custodia ipsius J. L. pro suspitione pzed' salvo custodiend' idemque J. O. in pisona illa sub Custod' pzed' J. L. a pzed' tempore quo commissus fuit ad pisonam pzed' per unum mensem extunc pproxime sequentem pro eadem suspitione sub custodia pzed' J. L. detentus fuit pzedict' tamen J. L. statutum pzed' & penam in eodem content' minus ponderans decem libras legalis monete Angliæ de eodem J. O. pro easiamento (Anglice Bale) & fabore in Gaola pzed' per idem tempus habend' die, &c. anno, &c. apud H. &c. recepit in contemptum Dom' Reg' nunc & contra formam statuf' pzed' & contra pacem, &c.

Indictment against a Bailiff of a Hundred, for taking Fees to excuse a Freeholder from appearing at the Assizes or Sessions.

Suffex, ff. **J**UR', &c. quod J. T. nuper de L. in Com' S. Yeoman existens Ballibus Hundredi de H. in Com' pzed' 7 die Maii, Anno Regni, &c. apud L. in Com' pzed' pretextu & colore Officii sui pzed' unius & extorsit de quodam T. K. un' liberozum tenen' in & de Com' pzed' quinque solidos cepit & extorquebat pro excusation' attendenc' sive comparenc' pzed' T. K. tempore Alizarum extunc pprox' tenend' in & pro Com' pzed' ubi reuera pzed' T. K. in nullo iur' pannello per Vicecomitem Com' pzed' retornat' fuit, ubi etiam reuera nulla talis pecunie summa pro feodo pzed' J. T. pro excusatione attendenc' sive comparenc' (Anglice, the Appearance) pzed' T. K. ad Alizas pzed' debet' fuit pzed' J. T. in perniciosum exemplum aliozum Malefactorum ad grave dampnum ipsius T. K. & contra pacem dict' Dom' Reg' Coron' & Dignitat' suas, &c.

Against an Informer for taking Money.

Suffex, ff. **J**UR', &c. quod R. G. nuper de, &c. in Com' S. Yeoman, modo & per duos annos jam ult' elapsed' communis Informator existens septimo die Maii Anno Regni, &c. apud H. in Com' pzed' decem solidos in pecuniis numeratis de quodam J. R. de, &c. recipiebat & extorquebat pretextu quod idem J. R. exercuisset & usus fuisset Arte sive Mysterio Historis non existens Apprentic' per spacium septem annorum ad grave dampnum ipsius J. R. in malum exemplum aliozum huiusmodi casu delinquen' & contra Pacem dict' Dom' Regis Coron' & Dignitat' suas, &c.

Fees.

Fees.

Bailiff. } Taking more than 4*d.* for an Arrest, forfeits 40*l.* 23 *H. 6. cap. 10.* and treble Damages to the Party grieved; the 40*l.* to be divided between King and Prosecutor.

Bail-bond. — Taking more than 4*d.* like Punishment.

Clerk of the Peace. } For enrolling a Bargain and Sale of Lands not exceeding 40*l.* per *Ann.* 12*d.* if it exceed that yearly Value, then 2*s.* 6*d.* and no more; and for a Licence or Recognizance for Badger, Drover, Lader, Kidder, and Registring it. 2*s.*

Coroner. } May take 13*s.* 4*d.* of the Goods of the Party slain; and if he hath none, then he may take it of the Town where the Deceased was killed, if in the Day-time, and the Person who committed the Fact suffered to escape.

Gaoler. } If he take more than 4*d.* of the Party committed, forfeits *ut prius*, as in the Case of a Bailiff.

		<i>l.</i>	<i>s.</i>	<i>d.</i>	
Justice of Peace. }	Ut dicitur, {	For Recogn. of the Peace —	0	2	0
		For Recogn. to bail a Prisoner —	0	2	0
		For a <i>Supersedeas</i> of the Peace —	0	2	0
		Warrant of the Peace —	0	2	0
		Release of the Peace —	0	2	0
		Warrant —	0	0	4
		Recognizance of an Ale-house-keeper —	0	1	0

Mayors. } Sealing Bushels and other Measures — 0 0 1
 Sealing an Hundred Weight, and proportionably — } 0 0 1
 And if he takes more, forfeits 40*s.* between the King and Party grieved; which Default Justices of the Peace have Power to hear and determine. 7 *Hen. 7. cap. 3.*
 And by 11 *H. 7. cap. 4.* Two Justices, *Quorum unus*, to hear and determine the Defaults of Mayors, &c.

Pounding. } Taking above 4*d.* for pounding of a Distress, forfeits 5*l.* to the Party grieved. 1 & 2 *Pb. & M. cap. 12.*

Sheriff. } For arresting 20*d.* If he takes more, forfeits as a Bailiff, *ut prius*.

Taking

Taking more than 12 d. for every 20 s. of the yearly Value of the Lands exceeding 100 l. *per Ann.* and 6 d. if under, for executing an *Habere facias possessionem aut seisinam*; or taking Poundage for executing a *Ca. sa.* or charging one in Execution for a greater Sum than really due to the Plaintiff; and being convicted thereof, shall be guilty of Extortion, and shall forfeit treble Damages to the Party grieved, and double the Sum extorted, and 200 l. more; one Moiety to the Crown, the other to the Prosecutor. See *Sheriff*. 3 Georgii, cap. 15.

Felo de se.

IS one who committeth Felony, by murdering himself voluntarily.

It has been the Opinion of learned Men, That a Person who is *Compos mentis*, cannot be guilty of so much Malice towards his Person, which may occasion him wilfully to kill himself, because naturally the Intentions of Men aim at what is good for themselves, and at what conduceth to their own Preservation; and therefore it is to be presumed, that where a Man killeth himself, he is not *Compos mentis*.

If a Man who is *Non Compos* giveth himself a mortal Wound, and before he dieth becomes of sound Memory, and afterwards dies of that Wound, now tho' he was *Compos mentis* when he died, yet because the original Cause of his Death was the Wound which he gave himself whilst he was *Non Compos*, he shall not be a *Felo de se*, nor forfeit his Goods, because the Death must have Respect to the original Act, which was the Wound. 1 Rep. 100. in Shelley's Case.

The Person who is guilty of this Offence, must be,

1. Of the Age of Discretion.
2. *Compos mentis*.
3. The Act must be voluntary.
4. Death must ensue within a Year and a Day after the Stroke or Wound; otherwise no Forfeiture of Goods, &c. incurrereth.

But in some Cases the Act may be voluntary; as if I am assaulted, and draw my Sword to defend my self, and happen to fall down, and the other pursuing his wicked Intentions to destroy me, falls upon my Sword, and kills himself, he is *Felo de se*.

But if I stand upon my Defence without being assaulted, and am only in Danger thereof, and another runs upon my Sword and kills himself, he is not *Felo de se*.

This

Conviction.

This must be by the Oath of twelve Men before the Coroner; *super visum Corporis*; and when his Inquisition is returned and filed, 'tis not traversable. *Sid. 90. 1 Vent. 278. contra.*

If the Body cannot be found, &c. then the Inquiry may be before the Justices in the Sessions; and this is traversable. *3 Inst. 55.*

So if the Inquiry be in B. R. in the same County, 'tis traversable by Executor or Administrator.

And till Conviction, no Goods are forfeited.

The Coroner's Inquest found, That *seipsum felonice submersus fuit*, he was order'd to attend B. R. to amend it; for it should be *jecit seipsum in aquam*, &c. *Sid. 259.*

2 Leon. 200.

If a Presentment is made before a Coroner, that a Man was *Felo de se*, and that he had Goods in the Possession of S. this Presentment must be certified into B. R. upon which, Process out of the Crown-Office issues against S. and it is continued till he is outlawed.

Forfeiture.

This is of all the Goods and Chattels which the Party had at the Time of the Stroke given, or any Time since; for it relates to that Time, and not to the Death.

Dyer 261.

And yet there is an Opinion in my Lord *Dyer*, That if Money is owing to one who is *Felo de se*, upon simple Contract, and not on *Specialty*, the Debt is not forfeited; because such Debtor may wage his Law with the King.

Dyer 160.

A Debtor was bound with Sureties to pay the Money, and made a Bargain and Sale to the Sureties, of Goods to the Value of the Debt, to indemnify them; in which Deed there was a Covenant, That if the Debtor saved them harmless, that the Bargain should be void, and that in the mean Time he should have the Use of the Cattle: Before the Debt became due, the Debtor killed himself, and the Sureties seized the Cattle; but it was held, the Lord Almoner should have them, or the Money for which they were sold, tho' the Property was in the Vendees; but then he ought to discharge them from the Debt.

Melius Inquirend. Pardon.

Not granted but where a Misdemeanor is in the Coroner. *Vent. 182, 352.*

Of all Offences, &c. except Murder, a *Felo de se* is not under this Exception, because there is a Difference between Killing one's self and another; for the first is against the Law of Nature, the other against the *Mosaical Law*, by which Vengeance is to be taken against the Manslayer; but no Vengeance can be had against one who is *Felo de se*; therefore his Goods, &c. are forfeited to the King, for depriving him of the Benefit of a Subject. *Levinz, 1 Part, 8.*

An Inquisition taken before a Coroner upon the
View of the Body.

Midd' ff. **I**nquisitio indentat' capta apud L. in Com' pzed' 31 die Decembris, Anno Reg' &c. coram Alex. Luxford, Gen' un' Coronat' dict' Dom' Reg' in Com' pzed' super visum corporis cuiusdam W. G. de A. in Com' pzed' Labourer, ibidem mortui jacen' per Sacramentum (of the Jury) qui dicunt super Sacram' sua quod pzed' W. vicesimo nono die Decembris, Anno Reg' &c. supradicto circa horam quintam post meridiem ejusdem diei Deum pre oculis suis non habens, sed Instigatione Diaboli seductus in quadam Domo cuiusdam R. N. apud H. in Com' pzed' adtunc & ibidem solus existens cum uno cingulo corii pretii unius denar' quod ipse tunc & ibidem in manibus suis habuit & unum finem inde circa collum suum adtunc & ibidem posuit & circa trabem alter' finem inde ligabit seipsum adtunc & ibidem voluntarie & felonice suspend' suffocabat & strangulabat, & sic Jur' pzed' dicunt super sacram' suum quod pzed' W. C. modo & forma pzed' adtunc & ibidem voluntarie & felonice ut Felo de se seipsum murtheravit contra pacem dict' Dom' Reg' Coron' & Dignitatem suas. Ac quod idem W. nulla habuit bona sive catalla, terras sive tenementa. In cuius rei testimonium tam pzedat' Coronator quam Jur' pzed' presentibus sigilla sua apposuerunt. Dat' die, anno & loco supradictis.

If it be for Cutting his Throat, then after the Year
of the King, as in the former Precedent, say,

Apud L. pzed' in Com' pzed' in & super seipsum in Pace Dei & dicti Regis adtunc & ibidem existen' adtunc & ibidem felonice voluntarie & ex malitia sua pzedogitata insultum fecit Et quod pzed' W. G. cum quodam cultello valoris unius denar' quod pzed' W. G. in manu sua dextra adtunc tenuit & habuit seipsum in & super Guttur ipsius W. adtunc & ibidem felonice voluntarie & ex malitia sua pzedogitata percussit & pupugit dans sibi ipsi adtunc & ibidem cum cultello pzed' in & super Guttur suum unam plagam mortalem latitudinis quatuor pollicium & profunditatis unius pollic' de qua quidem plaga mortali pzed' W. G. a pzed' vicesimo nono die Septembris, Anno decimo tertio supradicto usque primum diem Octobris tunc pzed' sequen' apud L. pzed' in Com' pzed' languebat & languidus virit qui quidem W. G. pzed' primo die Octobris, Anno 13 supradicto apud L. pzed' in Com' pzed' de plaga mortali pzed' obiit, & sic, &c.

If it be upon some sudden Sickness or Distemper,
then after *per Sacram.* of the Jury, say,

QUI dicunt super Sacram' suum quod ita accidebat apud H. pzed' in Com' pzed' 31 die Decembris, Anno, &c. quod pzed' W. G. egrotabat apud H. pzed' de Febzi, a quinto die Decembris ult' pzetit' usq; ad decimum diem ejusdem mensis extunc pzet' sequen' quo quidem decimo die ex Febzi pzed' & visitatione Dei adtunc & ibidem pzed' W. G. circa horam octavam ante meridiem ejusdem diei obiit, & Juratores pzed' dicunt quod pzed' W. G. ex nullo alio morbo, egritudine aut infirmitate ad mortem suam debeniebat, sed hec est causa mortis sue, & non aliter. In cujus, &c.

For killing another in his own Defence.

Inquisitio, &c. qui dicunt super Sacram' suum quod ubi quidam G. L. nuper de, &c. in Com' pzed' Gen' fuit in pace Dei & dict' Dom' Regis apud L. pzed' 31 die Decembris, Anno, &c. circa horam secundam post meridiem ejusdem diei venit pzed' H. B. & ex malitia sua pzetogitata in ipsum G. L. adtunc & ibidem insultum fecit & ipsum verberasse & interfecisse conatus fuit continuando insultum pzed' a domo cujusdam W. B. in L. pzed' usq; quendam locum voc', &c. in Com' pzed' & idem G. L. videns ipsum H. B. tam malitiose disposit' fugit usq; ad quendam murum in dicto loco vocat', &c. quem murum ob metum mortis sue evadere non potuit, sicq; idem G. L. in Salvatione vite sue erga pzetat' H. B. remanebat ad se defendend' erga ipsum H. B. & cum quodam Gladio pzetii unius solidi quem pzed' G. L. adtunc & ibidem in manu sua dextra tenebat in defensione sua eundem H. B. super dextram partem pectoris sui percussit & pupugit dans eidem H. B. adtunc & ibidem quandam plagam mortalem latitudinis unius pollicis & profunditatis trium pollicium de qua quidem plaga mortali pzed' H. B. a pzed' 31 die Decembris usq; quintum diem Januarii extunc pzet' sequen' apud L. pzed' in Com' pzed' languebat, & languidus vixit qui quidem H. B. pzed' quinto die Januarii, Anno, &c. supradicto apud L. pzed' in Com' pzed' de plaga mortali pzed' obiit, & sic idem G. L. ipsum H. B. adtunc & ibidem se defendendo interfecit. In cujus rei Testimonium, &c.

Felony

Felonies by Statute are,

Stealing of Goods which by Agreement he is to use, or shall be let to them in Lodgings. 3 & 4 W. & M.

Delivering Silk by a Throwster to a Man to work, and he steals it, this was Felony before that Statute: So the Delivery of Plate to a Butler, or Sheep to a Shepherd, and they steal them; because the Property was still in the Owner. *Kelynge* 35.

Apprentices. { There shall be the Duty of 6d. in the Pound under 50l. and 1s. if above 50l. paid for putting out Apprentices; and all Indentures shall be stamp'd with Stamps denoting these Duties; and Forging either of them is Felony without Benefit of Clergy. 8 A. c. 9.

Armour. { Employing the King's Armour, Munition or Ordnance, to the Value of 20 s. Prosecution must be within a Year; loseth Lands but during Life; no Corruption of Blood; the Wife shall have Dower. 31 Eliz. cap. 4. This cannot be determin'd in Sessions.

Assembly. { An unlawful and rebellious Assembly of any Persons to the Number of twelve, or above. 1 M. cap. 23. expir'd.

Bail. { Acknowledg'd in the Name of another not privy or consenting. 21 Jac. cap. 26.
{ But if taken *de bene esse* at a Judge's Chamber and not filed, no Felony. *Sid.* 90.

Bastard. { Concealing the Death of it, unless the Mother proves by one Witness it was dead-born. 21 Jac. cap. 27.

Buggery. { With Man or Beast, there must be *Penetratio & Emissio*, &c. 25 H. 8. cap. 6. revived by 5 Eliz. cap. 7. No Clergy.

Burglary. —Vide Robbery, and *antea*.

Burning. { Rick or Stack of Corn, Hay or Grain, in the Night-time, or Barns or Out-houses. 21 & 22 Car. 2.

But where a Man was indicted, for that he being possessed of an House, did *felonice* set it on Fire, with an Intent to burn his Neighbours Houses; this was adjudg'd no Felony, but a Trespass. *Kelynge* 29.

Chafes. { Hunting in them in the Night-time with painted Faces. 1 H. 7. cap. 1.

Cloth.

- Cloth. — Stolen from Tenters in the Night. 22 *Car.* 2.
- Cloaths. { Tearing, cutting, spoiling, burning or defacing Cloaths or Garments in the Streets, Felony, and to be transported for seven Years. 6 *Geo.* cap. 23.
- Coach-house { Stealing Goods of it to the Value of 5 s. tho' not broke open, or assisting any Person, to do it either by Day or Night. 10 & 11 *W.* 3 *H.* 5. cap. 1. 2 *H.* 6. cap. 9. Clergy.
- Coin, &c. { Blanching Copper or Silver for Sale, or mixing blanch'd Copper with Silver, or knowingly buying or selling it, or offering it to Sale; or any malleable Composition of Minerals or Metals heavier than Silver, and looking like Standard Gold; paying or putting off counterfeit'd mill'd Money, or unlawfully diminish'd (and not cut in Pieces) at a lower Rate than its Denomination doth import.
No Corruption of Blood, nor Loss of Dower: Prosecution must be within three Months. &c. continue till next Sessions of Parliament. 8 & 9 *W.*
- Deed. { Enrolled in the Name of another not privy or consenting. 21 *Fac.* c. 26.
- Eyes. { Putting them out, 22 & 23 *Car.* 2. or cutting out the Tongue; no Clergy.
- Egyptians. { Above fourteen Years of Age remaining here 2 Months. 1 & 2 *Ph.* & *M.* cap. 4. 5 *Eliz.* cap. 10. no Clergy.
- Escape. { Prisoner suffer'd voluntarily to escape, being under an Arrest for Felony, 'tis Felony in the Officer.
- Exchequer-Bills. { To counterfeit or forge them, or to demand Money on them, knowing them to be counterfeit. 8 & 9 *W.*
- Counterfeiting Exchequer-Bills, or any Endorsements, or tendering in Payment such forged Bills with forged Endorsements, or demanding to have the same exchanged for ready Money, knowing the Bill or Endorsement to be forg'd, is Felony without Benefit of the Clergy. 7 *A. c.* 7.
- Fine. { Acknowledging it in the Name of another not privy or consenting. 21 *Fac.* cap. 26. Sessions have no Jurisdiction of this Offence. See *Counterfeits.*
- Forging. { A Deed, after a former Conviction for the like Offence. 5 *Eliz.* cap. 14.

Felony.

- Forest. { Hunting in it unlawfully by Night with painted Faces. 1 H. 7. cap. 1.
- Hawks. { Stealing them, or finding or concealing them, and not bringing them to the Sheriff to be proclaimed. 37 Edw. 3. cap. 19. Clergy.
- Horses. { Destroying or killing them in the Night-time; but wounding them only, forfeits treble Damages.
- Hunting. { Vide Chases, Forests, Warrens. See *Deer-stealing* and *Hunting*.
- Jesuit. { Receiving, retaining, or maintaining him knowingly. 27 Eliz. cap. 2. No Clergy.
- King. { Imagining or conspiring to kill him, or any of his Counsel. 3 H. 7. cap. 14. No Clergy.
- Limb. { Cut off or disabled, with an Intention to maim or disfigure the Person. 22 & 23 Car. 2. No Clergy.
- Lottery. { Forging or Counterfeiting a Lottery-Ticket is Felony without Benefit of Clergy. 8 A. c. 4.
Forging or Counterfeiting standing Orders made and exchanged for Lottery-Tickets, or Receipts to be given out in Pursuance of the Lottery-A&t. 9 A. and another A&t, 9 A. for raising two Millions; and the Lottery-A&t, 10 A. and another A&t, 10 A. for raising 1800000 l. upon certain Funds; or altering the Number or principal Sum of any Order, or counterfeiting the Hand of any Person to such Order, &c. is Felony.
- Maimed. — Vide Limb.
- Marrying. { (1.) A second Husband or Wife, the first living; but then the Man must be above 14, and the Woman above 12; if under that Age and married, and disagreeing afterwards, may marry again.
(2.) Either of them being absent above seven Years beyond Sea, though Notice; but if in England, must not have Notice that the Party is living.
(3.) Divorce à mensa & thoro may marry: As *causa Adulterii*, which was *Middleton's Case*; *causa Scortie*, which was *Rook's Case*.
(4.) After a Sentence of Nullity in the Ecclesiastical Court; in these three last Cases may marry again. 1 Jac. 11. Clergy.
- Mill'dMoney — Vide Coin.
- Money. — False imported. 17 Edw. 3.

Note,

- Note, { Slitting or cutting it, 22 & 23 Car. 2. No Clergy.
- Ordinance. — *Vide* Armour.
- Poisoning. { Wilfully Poisoning, if the Party die within a Year and a Day. 1 Edw. 6. cap. 12.
- Popish Priest—*Vide* Jesuit.
- Prison. — Breaking it by a Felon. 3 H. 7. cap. 14.
- Privy Counsellor. { Unlawfully attempting to kill him, or he who shall unlawfully assault and strike, or wound a Privy Counsellor when in Execution of his Office, and being convicted thereof, is a Felon, without Benefit of Clergy. 9 A. 6. 16.
- Rape. { This was Felony at Common Law; but by the Statute of W. 1. cap. 13. made a Misdemeanour only, punishable by Fine and Imprisonment: But 10 Years afterwards, by the Statute of W. 2. cap. 34. it was made Felony again.
If the Woman is under 10 Years, though she consent, per 18 Eliz. c. 6. If above 10 Years, and not consenting to do the Act, tho' she doth consent after 'tis done.
But in this subsequent Consent the Husband may appeal. 6 Rich. 2. cap. 6. No Clergy. 18 Eliz. cap. 7. upon Conviction, Confession, or Outlawry.

In Michaelmas Term, 14 Eliz. a Scotchman was indicted for a Dyer 304. Rape upon a Girl of seven Years old, and no more, and upon the Evidence of credible Witnesses, was found Guilty, but the Court very much doubted whether the Fact could be committed upon such a young Girl: And this was the Reason of making that Statute 18 Eliz. declaring it Felony to ravish a Girl under 10 Years of Age, tho' consenting to the Act.

Recovery. { Acknowledging it in the Name of another, not privy or consenting. 21 Jac. 26.

Recognizance.—*Vide* Recovery.

Record. { Stealing them. 8 H. 6. cap. 12. Clergy.
Sessions have no Jurisdiction of this Offence.

Rescous. { Of a Prisoner taken out of any pretended privileged Place, and he who made the Rescous not paying 500 l. within a Month after Conviction, must be transported, and if he return within seven Years, 'tis Felony. 8 & 9 W.

Robbery. { House, Barn or Stable, in the Day-time, and taking in Value 5 s. tho' no Body within, and breaking in the Night-time, and putting the Owner, &c. in Fear. 39 Eliz. cap. 15.

Felony.

Sea and Sea-man. { Subjects in passing over the Sea to a Foreign Prince, in order to serve him. 3 *Fac. cap. 4.*

Captains and Mariners belonging to Ships destroying the same, to the Prejudice of the Owners and Merchants, shall suffer Death as Felons. 1 *A. cap. 9.*

Servants above 18 Years old.

{ Other than Apprentice, going away with or imbezilling the Goods of his Master, in Value 40 s. deliver'd to him, &c. 21 *H. 8. cap. 7.* After Decease of his Master, spoiling Goods, &c. 33 *H. 6. cap. 1.* and not appearing in B. R. upon Proclamation; he hath Clergy by the Statute of 1 *Ed. 6. c. 12.*

{ Receiving Master's Rents, and going away, not within the Statute.

If I deliver a Bond to my Servant to receive 20 l. which he receives, and goes away with the Money; this is not within the Statute, because a Bond is not properly Goods, but a Chose in Action. So if I deliver Goods to my Servant to sell in a Market; which he doth, and runs away with the Money; it is not within this Law, because he had not the Money by my Delivery: But if one Servant delivers Goods to another Servant, and he runneth away with them, this is Felony, because the Delivery of the Servant is the Delivery of the Master. *Dyer 6. b.*

Sheep.

{ Sending them beyond Sea, after a former Conviction. 8 *Eliz. c. 3.* Clergy. Destroying or killing them in the Night-time. 22 & 23 *Car. 2. cap. 7.*

Ship.

{ If any Owner, Captain, Master, Mariner or other Officer belonging to a Ship, shall after 24 *June, 1718.* wilfully cast away, burn or destroy the Ship, or direct, or procure the same to be done, to the Prejudice of any Person who shall underwrite any Policy of Insurance thereon, or of any Merchant that shall load Goods thereon, he shall suffer Death. 4 *G. cap. 12.*

Shop.

{ Breaking it in the Day-time, and taking to the Value of 5 s. 3 & 4 *W. & M.* Though he doth not break it in the Day-time, yet if he take the Value of 5 s. 11 *Will.*

Soldier.

{ Wandring. 39 *Eliz. cap. 17.* No Clergy. Departing from a Captain without Leave. 18 *H. 6. cap. 19. 2 Ed. 6. cap. 2.* Clergy.

Officer or Soldier out of *Great Britain*, and raising a Mutiny in the Army, or refusing to obey a Superior Officer, or resisting any Officer in the Execution of his Office, or striking, drawing,

drawing, or offering to draw or lift up any Weapon against his Superior Officer, shall be guilty of Felony. 7 *A. c.* 4.

Any Soldier raising a Mutiny, or refusing to obey his Superior Officer, or resisting, &c. or striking, &c. shall suffer as a Felon, being convicted: The said Felony to be tried in B. R. or before Commissioners assigned by the Crown. 10 *A. c.* 10.

Stable. { Stealing Goods in Value 5 s. out of it, though not broke open, or assisting to do it by Day or Night. 10 & 11 *Will.*

Stamps. { Counterfeiting or selling Vellum, Paper, &c. with such counterfeit Stamp. 9 & 10 *W.* No Clergy.

Any Person *causing or procuring* any Stamp or Mark to be forg'd or counterfeited, resembling any Mark or Stamp used for the Stamp Duties, or *causing or procuring* any Vellum, Parchment, or Paper to be marked with such counterfeit Stamp, shall be adjudg'd, as if he had actually done it himself, &c. Felony; no Clergy. 6 *G. c.* 21.

Stealing. { Any Goods, which by Contract or Agreement the Party wasto use; Felony. 3 & 4 *W. & M.* now made perpetual per 6 & 7 *W.*

Statute. { Acknowledging it in the Name of another, not privy or consenting. 21 *Fac. cap.* 6.

Tongue. { Cutting it out maliciously. 5 *H. 4. cap.* 5. 22 & 23 *Car.* 2.

Transporting. { A Rogue, and he returning without Licence, 39 *Eliz. cap.* 4. 1 *Fac. 1. cap.* 7. 25. Clergy; if burnt, no Clergy.
Of Silver. 17 *Ed.* 3. Clergy.

Escaping before Transportation, or returning from *America* before the Time expired, for which a Felon was order'd to be transported. No Clergy. 6 *G. cap.* 23.

Eight or more hindring, wounding, &c. Officers of Customs in Execution of their Duty, Transportation for seven Years, returning within that Time Felony. No Clergy. 6 *G. c.* 21.

Warehouse. { Breaking it in the Day-time, belonging to a Dwelling-house, and taking to the Value of 5 s. 3 & 4 *W. & M.* tho' not actually broken, &c. 11 *Will.* No Clergy.

Warren. { Hunting in it in the Night-time with painted Faces. *Vide* Forests.

Felony.

In the First Degree.

1. By Invocation or Conjurati^on of Evil Spirits.
2. Consulting, entertaining or employing them.
3. Taking up a dead Person to be employed, tho' not actually used, in Charm or Witchcraft.
4. Doing any Witchcraft, Inchantment or Charm, &c. whereby any Person is killed, destroyed, consumed, or lamed. No Clergy, 1 *Fac. cap. 12.*

Witchcraft.

In the second Degree :

By taking upon them by Inchantment, Charm, &c. to tell where Treasure is, or where Goods lost, &c. may be found, or to provoke unlawful Love, or destroying Goods or Cattle, or using Witchcraft to hurt any Person, though not done : The first Offence is Imprisonment for a Year, and Pillory ; and being convicted thereof, and receiving Judgment, and offending again, 'tis Felony. 1 *Fac. cap. 12.*

Dr. Lamb was indicted, for that he used *quasdam malas & execrabiles & diabolicas Artes* ; and the Indictment was quash'd, because there was not a Word in it which signified Witchcraft ; It may be express'd by the Word *Incantatio*. *Latch 156.*

Woman. See
Title *Woman*.

Taken away against her Will, and marrying her ; but then she must have Lands or Goods, &c. or be an Heir apparent, and must be married or defiled. 3 *H. 7. cap. 2.*

Taking in one County and marrying in another, Trial must be where married ; it cannot be in Sessions.

Privy to Marriage, and not to the Force, not Guilty ; marrying with Consent, but under the Force ; Felony. 39 *Eliz. c. 2.* No Clergy.

Wood and
Coppice.

Maliciously setting on Fire, burning, or causing to be burnt, any Wood, Under-wood or Coppice, or any Part thereof ; Felony. 1 *Geo. cap. 48.*

Any

Wreck.

{ Any Person making Holes in the Bottom, Side, or in any Part of the Ship, or stealing any Pump, or doing any Thing tending to the Loss of the Ship, shall be a Felon without Benefit of Clergy. 12 A. c. 18. See *Tit. Wreck.*

Where a Felon steals Goods and hides them, and afterwards ^{5 Rep. 109.} flies for the Felony, those Goods are not forfeited as *Waifs* in Law, because *Waifs* are properly those Goods which the Felon hath about him, and which he leaveth, being closely pursued, that he may more readily make his Escape; but stolen Goods which he hides, may be taken by the Owner where-ever he finds them. ^{Foxley's Case.}

The Indictment for a Felony in stealing Goods, must be *Quod felonice cepit & asportavit*. Now if Goods are deliver'd to a Carrier to carry to L. and he carrieth them to another Place, and there converteth them to his own Use, this is Felony; for though it cannot strictly be said, that he *Felonice cepit* those Goods, yet the Carrying them to another Place, and there disposing them to his own Use, sheweth that he always intended to steal them, and not to take them upon the Contract or Agreement of the Owner.

So if one come to a Market pretending to buy a Horse, and the Owner giveth him Leave to ride the Horse to try his Paces, and he rideth away; this is Felony: So if I deliver Goods to a Porter to carry to such a Place, and he carrieth them to another Place; and there openeth and disposeth of them; this is Felony.

The Law is the same if the Goods were carried to the Place appointed, and then embezzled; because when they are brought to that Place the Contract is determined, and the Possession is revested in the Owner, and so being taken away afterwards, 'tis Felony. *Kelin.* 82, 83.

Upon an Indictment of Felony the Jury found that the Defendant came to the Shop of A. C. and asked to see two laced Cravats, which she shew'd and deliver'd them into his Hands; then he asked the Price, and she told him, so much; he offer'd Half the Money, but ran away with the Goods in her Sight: Adjudged *Felony*, because the subsequent Act in running away, shews his Intention to take the Goods *felleo animo*, and though they were delivered to him by the Owner, yet in Law they were not out of her Possession, because the Contract was not perfected, and by Consequence the Property not altered; so that the Fact is as if he had taken the Goods openly out of the Shop, and run away with them. ^{Raim. 276.}

One *Farr* knowing M. S. had a Sum of Money, and rich Furniture in her House, procured an *Affidavit* to be filed of the Service of a Declaration in Ejectment against her at his ^{Raim. 276.} ^{Sid. 254.}

Suit, though he had no Title to the House, and got Judgment and a Writ of Possession; and entered and turned her out, and seized the Goods, and converted them to his own Use; for which he was indicted and found guilty of Felony at the Old Bailey, and executed, because he used the Process of Law with a felonious Intention.

10 & 11
Will. 23.

To encourage Men to bring Offenders to Punishment, there is a Law, that apprehending a Felon for stealing to the Value of 5 s. out of a Shop, Coach-house, Stable or Ware-house, either in the Night or Day-time, and the Person being convicted, such *Apprehender* shall have a Certificate under the Hand of the Judge or Justices, before whom such Conviction is had, certifying the same, and also within what Parish the Felony was committed, and the Person so taking or discovering the Felon; and the Judge or Justices shall direct and appoint the Certificate into so many Shares to be divided amongst the Persons concern'd, if any Difference shall arise amongst them touching their Right to the said Certificate.

This Certificate may be assign'd once and no more, and the original Proprietor or his Assignee shall be discharged of all Parish-Duties wherein such Felony shall be committed.

It must be enrolled by the Clerk of the Peace of that County in which it shall be granted.

And if the Person happen to be killed in taking a Felon, he that has Right to his Personal Estate shall have the Certificate. And as a further Encouragement to the Discovering a Felon, 'tis enacted, That if any Person shall commit *Burglary, House-breaking, or Felony in stealing Horses*, or any Money, Wares or Goods, and being out of Prison, shall discover two more who have committed such Felony, or cause two more to be discovered, apprehended and convicted, such Discoverer shall have the King's Pardon, which shall be a good Bar to any Appeal to be brought for the same.

And to make the Punishment of evil Persons more visible, those who are convicted of Theft or Larceny, for which the Benefit of Clergy is allowed, shall be burnt with the usual Mark in the *Left Cheek*, near the Nose in the Presence of the Judge.

But this Punishment had not its desir'd Effect; for it did not deter Offenders from committing such Crimes; but on the contrary, made them desperate, being by such an open and visible Mark made incapable to be trusted in any Service and Employment to get a Livelihood: Therefore by the Statute 5 Ann. this Act was repealed as to this Punishment, and the Offender was to be burnt in the Hand as before. And as a farther Punishment, the Judge or Justices, before whom the Party shall be convicted, may commit him to the House of Correction, or Publick Work-house, there to be kept without Bail not less than

5 Annæ,
cap. 6.

than six Months, nor above two Years from the Time of such Conviction, and to work all that Time, or be whipp'd.

And if such Person escapes, and is retaken two Justices of Peace (*Quorum unus*) where he was retaken, may remand him to the House of Correction, there to remain without Bail not less than a Twelve-Month, and not exceeding four Years, to be accounted from such Re-taking; and if the Keeper of the House of Correction shall neglect to keep him at hard Labour, and correct him; then Proof thereof being made by Oath of one Witness before a Judge of Assize, he may remove him from his Office.

By another Paragraph in the same Statute 10 & 11 W. it is enacted, That if any Person shall steal out of a Shop, Ware-house, &c. any Goods privately and feloniously of the Value of 5 s. or more, though such Shop, &c. be not broken open, &c. or that shall assist in committing such Offence, &c. shall not have the Benefit of Clergy. Now the Case at a Sessions in the Old Bailey, 9 Geo. was thus:

¶ A Shirt which was the Property of W. R. was left in the Shop of T. S. to be sent to a Seamstress to mend, and it was stolen by the Prisoner out of the Shop for which he was indicted and convicted. And the Question was whether he should have his Clergy? And adjudged that he might; for this was not a Felony within that Statute, which was made as a Remedy for the Owners of Shops to preserve their own Goods there, by Way of Trade, and therefore did not extend to Goods casually lost there; and consequently stealing such Goods to the Value of 5 s. was not Felony within that Statute, and without Benefit of Clergy.

And for a due Encouragement to be given to such who shall vigorously endeavour to discover and apprehend Malefactors; an Act was made in the same * Year, That he who after the * 5 Anne, 10th of May, 1707. shall apprehend and take one guilty of cap. 31. Burglery, or felonious Breaking and Entering an House in the Day-time, and shall prosecute him to Conviction, shall, over and above the Reward which he is entitled unto by the Statute 10 Willi. receive the Sum of 40 l. within one Month after such Conviction, to be paid by the Sheriff of the County where the Offence was committed, upon tendering a Certificate unto him, signed by the Judge before whom the Offender was convicted, certifying the same, and in what Parish it was done, and that the Felon was taken by the Party claiming the Reward.

And if any Dispute shall arise between the Persons who shall take a Felon, concerning the Right to such Reward, it shall be in the Power of the said Judge to proportion the same by his Certificate amongst them; and if the Sheriff shall fail in paying the said Sum, then he forfeits to the Party grieved double

Felony.

ble the Sum he ought to have paid, to be recover'd by Action of Debt, &c. with treble Costs.

And if any Person shall be kill'd in endeavouring to take such House-breaker, then his Executor or Administrator, upon Certificate from the Judge or Justice of Assize of the County where the Fact was committed, or the two next Justices of the Peace, that the Person was kill'd, shall receive 40 l. of the Sheriff where the Fact was done, and in Default of Payment, then double that Sum, with treble Costs.

The 40 l. the Sheriff may deduct in his Accounts, but not the 80 l. or treble Costs; and if he shall not have enough of the King's Money in his Hands to satisfy the same, then he shall be repaid by the Lord Treasurer out of the Revenue of the Crown, upon Certificate from the Clerk of the Pipe to that Effect.

And if any Person out of Prison shall discover two House-breakers, so as they shall be convicted, he shall have the like Reward of 40 l. and all other Advantages which such Taker or Prosecutor as aforesaid is entitled unto, and shall likewise have a Pardon, which shall be a Bar to an Appeal.

By the same Statute it is enacted, That he who buys stolen Goods, knowing the same to be stolen, or who shall receive or conceal any Burglar, Felon or Thief, knowing them to be so, shall be adjudged Accessary to the Fact, and being convicted, shall suffer Death. But if the principal Felon cannot be taken, then the Buyer or Receiver of the Goods which he stole shall be prosecuted only for a Misdemeanor, and fined and imprison'd, or suffer any other corporal Punishment as the Court shall inflict, tho' the principal Felon is not convicted; and this shall exempt the Accessary from any farther Punishment, if it shall happen that the Principal should afterwards be convicted.

7 Annæ
cap. 7.

By another Statute, 'tis made Felony to forge or counterfeit any *Exchequer* Bill, or any Endorsement thereon, or to tender any such Bill in Payment, or demand to have the same exchanged for ready Money by the Governor and Company of the Bank of *England*, or by any Receiver or Collector, knowing the same to be forged or counterfeited, with an Intent to deceive any Person; and 'tis Felony without Benefit of Clergy.

No Clerk of Assize or Peace, shall take any Thing of a Witness for giving Evidence against a Felon. Which see under Title *Clerk of the Peace*.

Observations
thereon.

Felonies committed in the Reign of one King, the Prosecution may be in the Reign of another.

Felonies committed in one County, and the Offender taken in another may be imprison'd where taken, and remov'd to be prosecuted where the Fact was done.

But

But if he carry the Goods with him, 'tis Felony in every County where they are carried.

By the Statute of 23 H. 8. *cap.* 1. Clergy is taken away from Principals and Accessories in Robbery: And because Men robbed in one County and fled into another, and so were indicted only for Felony, and had their Clergy; therefore by the Statute of 25 H. 8. *cap.* 3. Clergy was taken away from those who were found guilty in *any County* for stealing Goods, if it appear to the Judge that he ought not to have Clergy, if he had been tried in the County where the Fact was committed. *Anno* 31 *Eliz.* a Man committed a Robbery in *Wilts*, and fled into *Berks*, where the Goods were taken upon him; and there he was indicted only for Felony, and found guilty to the Value of 10*d.* And it appearing to the Court that he had *robbed* the Person in the *Highway*, the Question was, Whether he should be hang'd by the Statute of 25 H. 8. or only whipp'd for Petty Larceny? And resolv'd by all the Judges, That he shall only be whipp'd, because the Statute extends only to such who shall *demand their Clergy*, and says it shall be *denied*, if upon Examination it shall appear there was a *Robbery done*: But he is found guilty of Larceny only, and so need not demand his Clergy. *Moor* 550.

Officers may break open an House to take a Felon, or any one suspected thereof.

And if such Officer hath a Warrant to take a Felon, who is killed in resisting, 'tis not Felony in the Officer; but if the Officer is killed, *contra*.

If a Felon escape from an Officer by Force, and he cannot otherwise retake him, he may be killed, for the Officer will be justified by his Authority.

Cutting Corn, and carrying it away at the same Time, no Felony; but if he lay it aside, and afterwards carries it away, Felony.

A Felon brought before a Justice upon Suspicion, tho' it appears he is not guilty, yet he is not to be discharged without a Trial.

By the Statute 4 G. *cap.* 11. 'tis enacted, that where any Person shall be convicted of Grand or Petit Larceny, or any felonious Stealing, and who by Law may have the Benefit of Clergy, and liable to be burnt in the Hand or whipt, the Court instead thereof shall order such Offenders to be sent to some Plantations in *America* for 7 Years, and may transfer them over to the Use of any Person, contracting with another whom the Court shall appoint for the Performance of such Transportation for 7 Years. G. c. 11.

But when the Offender is to be punish'd with Death without Benefit of Clergy, and shall be pardoned in order to be transported, the same being signed by a Secretary of State, then the Court may order the like Transportation of such Offenders; and

Felony.

and likewise of any Person convicted of *receiving or buying stolen Goods, knowing them to be stole*, for 14 Years; and the Person who transports them, shall have a Property in their Service, for such respective Terms.

Returning before the End of the said Terms, they shall be executed as Felons attainted: But the King may dispense with the Transportation, and allow Offenders to return, paying their Owner such Sum, as by two Justices residing where he dwelt shall be judged reasonable; and where such Offenders shall have served out their Time, it shall have the Effect of a Pardon for the Crime.

The Person who shall contract with him, appointed by the Court to transport these Criminals, shall before they are transferred to him, give Security to the Person with whom he contracts, to transport them to some Colony in *America* as the Court shall order, and to procure a Certificate from the Governor or chief Custom-house Officer there, that they were landed, and that they shall not be suffered to return, by the wilful Default of the Contractor or his Assigns.

See 6 G.
cap. 23.

He who takes *Money* or any Reward, to help another to his *Goods which were stolen*, shall be guilty of Felony himself, and suffer as if he had stolen the Goods, unless he apprehends the Felon who did.

Any idle Person of the Age of 15 Years and under 21, may contract with a Merchant or other, to be transported in his Service for 8 Years, provided he come before the Lord-Mayor of *London*, or some other Justice of that City, or before two Justices in the County where the Contract is made, and acknowledge his Consent, and sign the Contract in their Presence, and with their Approbation, which shall be certified to the next General Sessions, with the Tenor of the Contract, there to be register'd without Fee.

6 G. c. 23.

By the Statute 6 G. all the Powers and Authorities in the Act before mentioned given to any Court, before whom any Felons convicted of any Offences, for which they may be transported, shall be observed, and executed by any *subsequent Court* held for any County, where such Felons shall be tried and convicted, tho' such other *subsequent Court* shall happen to be held at or in any other Town or Place, than that wherein such Trial or Conviction were or shall be.

Provido that the Court before whom such Felons shall be convicted, may nominate and appoint *two Justices of the Peace* of the County, &c. where such Offenders shall be convicted, who shall have Power to *Contract* with any Person for the Performance of the Transportation of such Felon, and to order such Security as the said Act directs to be taken by the Court, and after to cause such Felons to be delivered by the respective Gaolers pursuant to such Contracts, to the Person contracting for them or his Assigns, which said Contracts and Security shall

be

be certified by the Justices, who shall make and take the same to the next Court, held with the like Authority for the County, &c. where such Felons were or shall be convicted, to be filed and kept amongst the Records of the said Court.

All Charges about making Contracts, and taking such Security, and conveying Felons to be transported by Vertue of these Acts, shall be born by the County, &c. where the Court was held, which ordered such Felons to be transported, and the Treasurer of the County-stock shall by Order of the Sessions, pay all such Charges and Expences to such Persons as shall be employ'd for the Purposes aforesaid.

All Securities for Transportation hereafter to be taken by Vertue of these Acts, shall be by *Bond* in the Name of the Clerk of the Peace, &c. and they and their Successors shall prosecute such Bonds in their own Names, for which Purpose every Clerk of the Peace shall be a Body Corporate, and shall be paid by the Treasurer of the County-stock by Order of the Sessions, all such Charges, Costs and Expences as they shall be at, or sustain in any such Suit; and all Monies recovered on such Bonds, shall be for the Use of the County, and shall be paid to the Treasurer of the County-Stock.

The Person so contracting, and to whom any such Felons or Offenders shall be delivered to be transported, or any Persons directed by the Justices who made the Contract, may carry and secure the Felons thro' the County, and in such Manner as they shall think fit, towards the Sea Port, from whence they are to be transported; and any Person or Persons rescuing them, or any of them, or aiding or assisting in their Escape, shall suffer Death, as in Cases of Felony, without Benefit of Clergy.

Felons ordered for Transportation, coming on Shore and returning to Great Britain before they have been transported to America, or breaking Gaol, or escaping before Transportation, or being afterwards at large without some lawful Cause before the Term is expir'd, for which they were ordered to be transported, and being lawfully convicted thereof, shall suffer Death, without Benefit of Clergy.

The Clerk of the Assize, and the Clerk of the Peace, where such Orders for Transportation shall be made, and their Successors, shall at the Request of the Prosecutor, or any other in the King's Behalf, certify a short Transcript containing the Effect of every Indictment and Conviction, &c. and of the Order and Contract for Transportation, to the Court where such Offender shall be indicted, for which 2s. and 6d. and no more, shall be paid, which Certificate shall be a sufficient Proof that the Person hath been convicted, and ordered to be transported.

He who shall discover, apprehend and prosecute to Conviction of Felony without Clergy, any Person for taking Money or other Reward, to help another to his Goods which are stole, such Offender

See 4 G.
o-cap. 11.

fender (having not apprehended the Felon who stole them; and brought him to Trial and given Evidence against him) shall be entitled to a Reward of 40 l. for every Offender so convicted, and shall have the like Certificate and like Payments made without Fee, as any Person for apprehending, prosecuting and convicting a *Highway-man*.

Any Person after 24th *June* 1720, wilfully and maliciously assaulting another, in the publick Streets or Highways, with an Intent to tear, spoil, cut, burn or deface the Garments or Cloaths of such Person, and shall actually do it, then the Person so offending, and being thereof lawfully convicted, shall be guilty of Felony, and shall be transported for seven Years.

Geo.
cap. 22.

'Tis Felony without Benefit of Clergy for any Person after 1 *June* 1723, to appear *armed*, and having his *Face blacked or disguised*.

In any *Ground enclosed* where *Deer* have been, or shall be kept.

Or in any *Warren* or Place where *Hares* or *Conies* have been kept.

Or in any *High Road*, *Heath*, *Common*, or *Down*, or shall unlawfully and wilfully *hunt*, *wound*, *kill* or *destroy* any *Deer* in *Forest*, *Chase*, *Park*, or *enclosed Ground*.

Or shall unlawfully *rob* any *Warren* or Place where *Conies* or *Hares* are kept.

Or shall unlawfully take away, or steal any *Fish* out of any *River* or *Pond*, or break down any *Head* or *Mound* of a *Fish Pond*, whereby the *Fish* shall be lost.

Or maliciously *kill*, maim or wound any *Cattle*.

Or cut down or destroy *Trees* in any *Avenue*, *Garden*, *Orchard*, or *Plantation*, for *Ornament*, or *Shelter*, or *Profit*.

Or set *Fire* to any *House*, *Barn*, *Out-house*, *Hovel*, *Mow* of *Corn*, *Straw*, *Hay* or *Wood*.

Or maliciously *shoot* at any Person in any *Dwelling-house* or other Place.

Or knowingly send any *Letter* with a fictitious Name demanding any valuable Thing.

Or forcibly rescuing any Person in Custody for any of the said Offences.

Or who shall by Gift or Promise of any Reward procure any Subject to join with him in any such unlawful Act.

By the same Statute it is Felony without Benefit of Clergy for any Person guilty of any of the said Offences after 2 *Febr* 1722, not to surrender himself before 24 *Julii* 1723, to a Justice of Peace, where the Offence was committed, and voluntarily to make a Confession and Discovery on Oath of his Accomplices; and if he surrenders before 24 *Julii*, he shall be pardon'd.

He who is charg'd with any of the said Offences, before two Justices, by the Oath of one Witness, the Justices shall certify such Charge under their Hands and Seals to a Secretary of State, who shall lay the same before the King in Council, who may make an Order for the Offender to surrender himself to some Justice within 40 Days, which Order shall be publish'd in the *Gazett*, and sent to the Sheriff, and within six Days after shall be proclaim'd by him or his Officer in two Market-Towns, next to the Place where the Offence was committed, and a Copy thereof fix'd in some publick Place there; and if the Offender shall not surrender himself pursuant to such Order, he shall stand attainted of Felony without Benefit of Clergy, and the Judge of Assize upon producing such Order under Seal of the Council may award Execution.

* See the Form of the Certificate.

Concealing, Abetting or Succouring an Offender after the Expiration of the Time he is to surrender himself, knowing him to be charg'd on Oath, and that he hath been requir'd by such Order to surrender himself, this is Felony without Benefit of Clergy.

Offender taken before the Time expir'd in which he is by the said Order to surrender himself, shall be tried by due Course of Common Law.

The Inhabitants of the Hundred are chargeable to make Satisfaction for any Damages sustained by any Person, and done by any Offender against the aforesaid Act 9 Geo. the Sum to be recovered not exceeding 200 l. And if the Plaintiff recover in the * Action against any Inhabitant, and take out Execution against him, all the other Inhabitants of that Hundred shall be ratably and proportionably taxed towards an equal Contribution for the Relief of the Defendant; which Tax must be raised by such Ways, and in such Manner as is prescribed for raising Damages recovered against the Hundreds in Cases of Robbery, by the Act 27 Eliz. (viz.) two Justices (*Quorum unus*) may tax the Towns, Villages, Parishes and Hamlets in the Hundred, to make an equal Contribution, &c.

* The Action must be brought within a Year after the Offence.

A Warrant to search for a Felon, and to raise Hue and Cry, &c.

To the Constables and other Officers in the County of S. &c.

Suffex, ff. **W**Hereas T. P. of, &c. hath this present Day complained unto me R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That upon Friday the second Day of January last at Night, he was robb'd of, &c. and o-
ther

Felony.

ther Things, and that he hath great Cause to suspect J. O. an idle Person. [here describe his Person, Cloaths, and Age.] These are therefore to require you, and each of you, to search diligently within your several Precincts for the said J. O. and likewise to make Hue and Cry after him from Town to Town, and from one County to another, as well by Horsemen as Footmen; and if you shall find the said J. O. that then you apprehend him, and carry him before some Justice of the Peace where he shall be taken. And hereof fail not. Given, &c.

A Warrant to apprehend a Felon.

To the Constable, &c.

Sussex, ff. **W** Hereas T. P. of, &c. hath this present Day made Oath before me R. B. Esq; one of his Majesty's Justices of the Peace of the said County, and thereby charged J. O. of, &c. with the felonious Taking, &c. These are therefore to command you to apprehend the said J. O. and to bring him before me, or some other of his Majesty's Justices of the Peace for the said County, to be examined concerning the Premises with which he is charged. And hereof fail not. Given, &c.

Another Warrant to search for suspected Persons, &c. and to apprehend, &c.

To the Constables, Tithingmen, &c. in the County of Sussex,
and to all the other Constables within the said County.

Sussex, ff. **W** Hereas Complaint hath been made unto me by T. B. of, &c. That certain Sheep, &c. and other Goods, were lately feloniously taken from him, and that he hath just Reason to suspect several idle and disorderly Persons within your Parish to have unlawfully taken the same: These are therefore to command you, that immediately upon Receipt hereof, you diligently search every suspected House and Place within your Parish, which you and the said T. P. shall think convenient to search; and if you shall find any of the said Goods in the Possession of any such suspected Person or Persons, or shall have any just Cause to suspect any Person, that then you bring such Person or Persons before me, or some other Justice of the Peace for the County aforesaid, to answer the Premises, and to be examined concerning the same. And hereof fail not. Given, &c.

If he confesseth the Felony, then you may take his Examination subscribed by him thus: *Viz.*

The Examination of a Felon.

THE Examination of T. P. &c. taken before me R. B. Esq; a Justice of the Peace for the said County, the second Day of January 1703.

The said T. P. being charg'd before me by R. R. of, &c. That the said T. P. did lately feloniously steal out of the House of the said R. R. in the Parish of, &c. Woollen, &c. and other Goods of the said R. R. to the Value of, &c. He the said T. P. did upon Examination by me, the said second Day of January, confess that he stole the Goods, and sold them to J. O. of, &c. for 10^{li} And further saith not.

R. B.

T. P.

Mittimus.

To the Keeper of the common Gaol at H. in and for the County of *Sussex*, or to his Deputy there.

Sussex, ff. **T**Hese are to charge and command you to receive into * Or ha-
your Gaol the Body of T. P. late of, &c. taken by ving con-
W. N. and W. V. Constables of, &c. and brought by them before me tested it as
for Suspicion * of Felony, and that you safely keep him in your said the Case is,
Gaol and Custody until he shall be from thence discharged by due Course or being
of Law. Given under, &c. charged.

A Warrant to cause Witnesses to appear and give Evidence.

To the Constable, &c.

Sussex, ff. **Y**OU are hereby required forthwith to warn R. D. of, &c. and T. W. of, &c. to be at my House in H. &c. upon Friday the second Day of, &c. by Ten of the Clock, &c. to testify their Knowledge concerning a Felony suspected to be done by T. P. of, &c. And hereof fail not. And that you be there likewise with this Precept, to shew how you have executed the same. Given under my Hand, &c.

Felonv.

A Warrant for a Witness to appear and give Evidence at Sessions.

To the Constable, &c.

Suffex, ff. **W** Hereas I am inform'd, that J. H. of, &c. is a material Witness to be examin'd on his Majesty's Behalf, concerning a felonious Act suspected lately to be done by T. P. &c. These are therefore to command you to warn the said J. H. personally to appear at the next General Quarter-Sessions of the Peace, to be held for the said County at L. then and there to give Evidence upon such Matters as he shall be examined upon. Given under my Hand, &c.

Information against one appearing armed and with his Face blackt.

The Information of T. R. of, &c. taken on Oath before us R. R. and W. W. two of his Majesty's Justices of the Peace for the County of W. where the Offence herein mentioned was committed.

T HIS Information saith, That on Wednesday the 18th of Feb. 1724, T. W. of, &c. was armed with a Sword and Fire-Arms, having at that Time his Face black'd and disguised, and did voluntarily and wilfully on the Day and Year aforesaid so arm'd and disguised unlawfully * hunt, wound and kill one Deer in the Park of the Cafe is. B. B. of, &c. in, &c. enclosed, and where Deer are usually kept, contrary to the Statute in that Cafe made and provided.

T. R.

This Information must be certified by the two Justices, and return'd to a Secretary of State.

The Form of the Certificate.

To the Right Honourable R. Lord T. one of his Majesty's Principal Secretaries of State.

W E R. R. and W. W. two of his Majesty's Justices of the Peace in and for the County of W. do hereby certify, That T. R. of, &c. did on, &c. make Oath before us, That T. W. of, &c. was on Wednesday the 18th Day of February armed with a Sword and Fire-Arms, having at that Time his Face blackt and disguised;

guised; and that he did so armed and disguised unlawfully hunt, wound and kill one Deer in the Park of B. B. of, &c. which Park is enclosed, and Deer are usually kept there; and that the Information of the said T. R. so taken before us on Oath is hereby returned. Witness our Hands and Seals in the Day and Year above written.

R. R. W. W.

Condition of a Recognizance to appear and give Evidence against a Felon.

TH E Condition of this Recognizance is such, That if the said * Or at the J. H. shall personally appear at the next General Sessions * of next Assizes, &c. the Peace to be held at L. for the East Part of the said County of Suffex, and then and there give such Evidence as he knows against, &c. of and concerning his feloniously Stealing of two Silver Spoons, the Goods of R. B. and do not depart thence without Leave of that Court, that then, &c.

If there be no direct Charge against the Person, but only Suspicion, then you bind the Person in a Recognizance, with a Condition to appear at the Assizes or Sessions, as followeth:

The Condition for a suspected Person to appear, &c.

TH E Condition of this Recognizance is such, That if the above-bounded T. P. shall personally appear, &c. and do then and there answer all such Matters and Things which shall be objected against him, being suspected to have feloniously taken the Goods of, &c. and not depart without Leave of the Court, that then this Recognizance to be void, &c.

Indictment for a Felony.

Middl' ss. **J**UR', &c. quod J. O. nuper de H. in Com' Middlesex, Labourer, 27 die Junii, Anno Reg', &c. primo apud A. predict' in Com' pred' vi & armis, &c. Clausum cuiusdam T. P. fregit & intravit & unum equum coloris albi pretii 5 l. de bonis & catallis pred' T. P. abtunc & ibidem scil' apud H. pred' in Com' pred' invent' felonice furat' fuit cepit & effugavit contra Pacem dict' Dom' Reg' nitens coronam & dignitatem suam.

For seizing the Goods of a Felon before Conviction.
See *Forfeiture*.

By the Statute of 1 R. 3. cap. 3. If Goods of a suspected Person be seized before Conviction, he forfeits to the Party grieved double the Value, to be recovered by Action of Debt, 1 *Rep.* 171. See 1 *Lut.* 132. a Declaration on this Statute, *Raym.* 414.

Suffex, ff. **J**UR', &c. quod cum quidam J. O. nuper de H. in Com' S. Labourer, capt' & arrestat' fuit pro suspicionem felonie per ipsum perpetrat' viz. pro eo quod ipse J. O. felonice cepit & effugabit equum de bonis & catallis ejusdam T. P. & pzed' J. O. adtunc & ibidem ductus fuit coram H. P. Mr' un' Justiciar' Com' Reg' ad pacem in Com' pzed' conserband' assign' & per preceptum ejusdem Justiciar' debito modo commissus fuit Gaole Com' po' & quedam Personae, viz. J. S. de, &c. & T. R. de, &c. adtunc & ibidem 3 vaccas duos equos, &c. subducebant de bonis & catallis po' J. O. sic arrestat' pro Felonia pzed' antequam de Felonia pzed' convictus fuit contra formam Statuti in hujusmodi casu edit' & probis. & contra Pacem, &c.

This Statute is but in Affirmative of the Common Law; for there is a Writ to deliver the Goods upon Security given; and 'tis grounded upon this Reason, That the Felon may have something to support himself in *Prison*; but the Statute doth not extend to a Person *at Large*; for in such Case the Officer may seize them by the Statute of 25 *Ed.* 3. cap. 14. *Raym.* 414.

Co. lib. 206. So that at Common Law such Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himself: 'Tis true, they may be put in *salva custodia*, but cannot be seized for the Use of the King till the Party is convicted.

If the Felon doth not fly, but is apprehended with the Goods, the Owner shall have them; if he flies, and fresh Pursuit is made, and he *waives* the Goods, and they are *taken up and carried away* before the Owner comes, the *Property* is altered by the *Seizure*, and vested in the Lord; but if the Pursuit was always in View of the Felon, 'tis otherwise; *Hut.* 65.

Felony; Pleas thereunto,

THESE are of three Sorts, viz. { 1. Demurrer.
2. In Abatement or Bar.
3. The general Issue.

1. If the Defendant demur, he ought to be very certain that the Indictment is faulty; for if it be adjudg'd good, he shall have Judgment and Execution, because by the Demurrer the Fact is confessed as laid in the Indictment.

2. In Abatement, { 1. *Misnomer* in the Surname.
3. *Misnomer* in the Christian-name.

If in the Surname, 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment; but in the Christian-name, 'tis a good Plea to an Indictment; and if 'tis found or confessed by the Attorney-General, 'tis naught, but then the Party must confess his true Name, that he may instantly be indicted.

In Bar, { 1. *Auterfoitz* acquit.
2. *Auterfoitz* convict.

Auterfoitz
acquitt.

1. This must always be intended of a lawful Acquittal; for if the Indictment or Appeal is insufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the same Felony, unless Judgment is given upon such Indictment, for that must stand till reversed by Error.
2. This must be always of the same Felony; and therefore 'tis no good Plea to an Indictment or Appeal for another Felony.
3. An Acquittal upon an Indictment of Death, is no Plea to an Appeal brought for the same Death; but an Acquittal upon an Indictment or an Appeal, in Cases of Felony, is a good Plea to any other Indictment for the same Felony, though 'tis not so in the Case of Death.

Feme-Cobert.

But then the Appeal must not be erroneous in Substance, nor be brought by a wrong Person.

Auterfoitz
convict.

{

Of Manslaughter; either upon an Indictment or an Appeal, is a good Plea to any other Indictment for the same Crime,

Feme-Cobert.

THE Peace may be granted against her, or against an Infant tho' under 14 Years of Age; but then she must not be bound, tho' with her Husband; for the Recognizance will be void as to her; but she must find Sureties; which, if she cannot do, she must be committed.

If she commit a Riot or Trespas without her Husband, she may be indicted and fined, but the Fine shall not be levied on her Husband, but on her after his Death, and she shall be committed till 'tis paid. 9 Rep. 72. Dr. *Hussey's* Case; 11 Rep. Dr. *Fogger's* Case.

If she steal Goods by the Compulsion of her Husband, 'tis not Felony in her, because of the Necessity of Obedience; but if it was at his Perswasion without any Constraint, she is then guilty of Felony, and her Husband is Accessary.

But this Privilege doth not prevail in Cases of Treason and Murder, because of the Greatness of those Offences.

It hath been held, That if both steal together, this shall be taken to be the Act of the Husband alone, and that she cannot be so much as Accessary to it, because of the Necessity of Obedience as aforesaid; but I think Obedience should only extenuate the Crime, for such it is, and she ought not to consent to it; if she doth, she may be indicted.

She cannot steal her Husband's Goods, but if she is taken away with them against his Consent, 'tis Felony in him that takes her; so 'tis if she deliver her Husband's Goods to an Adulterer, this is Felony in him.

In an Indictment for selling Ale without Licence, the Husband must be join'd, because he is to pay the Fine.

She may be committed for a Force or Riot, as aforesaid, but an Infant cannot; yet if she be asked to find Sureties of the Peace, and cannot, she may be committed.

Feasant. See *Partridge*.

Fences. See *Trees*.

Forests. See *Dogs*.

Fire.

Fire.

TO prevent Losses and Mischiefs which may happen by Fire within the Cities of *London* and *Westminster*, and within the Compass of the Weekly Bills of Mortality, a * Law was * 6 Annæ. made, That the Churchwardens of every Parish in the said Places, shall, at the Charge of their respective Parishes, fix upon the Pipes belonging to the Water-works, so many wooden Stop-blocks, to lie even with the Pavement of the Street, with a Two Inch Plug; the said Stop-blocks to be repaired by the Parish, and the Plugs by the Owners of the Pipes; or so many Fire-cocks to go into each main Pipe; and to be plac'd in any Street where the said Churchwardens shall direct; and to make a Mark on the Front of any House over-against the Places where such Stop-blocks are, and to keep an Instrument in the said House to open the Plug when any Fire happens.

And that each Parish shall keep a large * Engine, and an * *Per 7 An- Hand-Engine*, and a Leather Pipe and Socket of the same *ne. The* Size as the Plug or Fire-cock, that the Socket may be put *Church-* into the Pipe to convey the Water clear to the Engine; or in *wardens* Default thereof, being convicted before two Justices of Peace, *may assess* shall forfeit 10 l. One Moiety to the Informer, and the *Money for* other to the Overseers of the Poor where such Default shall *the Main-* be made, for the Use of the said Poor. *tenance of* the Engine,

This Forfeiture is to be levied by a Warrant of two Justices, *Stop-* *blocks, &c.* &c. by Distress and Sale of the Goods of the Churchwarden. *as they do*

And it is further provided, That the Turn-cock belonging *for the* to the Water-work, whose Water shall first come into the *Mainte-* Main-Pipe where the Plug shall be opened at any Fire, shall be *nance of* paid 10 s. and the first Person who brings in a † Parish Engine, *the Poor,* if in good Order, with a Socket, Hose, and a Leather Pipe, *&c.* shall be paid 30 s. the Person who brings in the second Parish *† Per 7 An-* Engine, shall be paid 20 s. and the third 10 s. by the ‡ Church- *ne, or any* wardens where such Fire shall happen. *other great* Engine. *‡ Per 7 An-*

ne, but not without the Approbation of the Aldermen of the Ward or *his Deputy,* or two Common Council-Men of the Ward where the Parish is, in which the Fire happened.

All these Sums, in Default of Payment, shall be recover'd by Warrant of two Justices, &c. by Distress and Sale of the Goods of the Churchwardens.

And because Fires often happen by the Negligence and Carelessness of Servants, both in Houses and Out-houses; therefore if such Servant shall be lawfully convicted thereof before two Justices of the Peace by the Oath of one Witness, he shall forfeit 100 l. to the Churchwardens of such Parish, to be di-

distributed amongst the Sufferers, as to the Churchwardens shall seem just ; and in Default or Refusal to pay the same, immediately upon Conviction, being lawfully demanded by the Churchwardens, shall be committed by two Justices to the House of Correction for 18 Months, there to be kept to hard Labour,

All Houses built since *May, 1708.* shall have Party-Walls between House and House, built wholly with Brick or Stone ; in the Cellar, two Bricks thick ; from the Foundation upwards, 13 Inches ; above the Roof, 18 Inches ; and no Mundilions or Timber under the Eaves: Front and Rear-Walls to be carried two Foot and half high above the Garret-Floor, with Brick or Stone ; and if otherwise, then the Owner of the House and Head-Builder, shall each of them forfeit 50 *l.* one Moiety to the Informer, and the other to the Poor of the Parish where the House is built, and to be paid to the Churchwardens for that Purpose.

This is to be levied by a Warrant from two Justices, by Distress and Sale of the Offender's Goods.

The Conviction is to be upon Oath, or upon View of one or more Justices ; and for Want of Distress, the Party shall by the like Warrant be committed till Payment.

And for the Space of 3 Years next ensuing, and from thence to the End of the next Sessions of Parliament, no Action shall be brought against any Person in whose House any Fire began.

7 A. c. 17 The Rewards to the Turn-cock and others shall not be paid without the Approbation and Direction of the Alderman of the Ward where the Fire happen'd, or of his Deputy, or 2 Common Council-Men of the same Ward, the several Rewards shall be likewise paid to the Keeper of any other great Engine, who shall bring it in, to help to extinguish the Fire, in good Order and compleat, though it is not a Parish Engine.

If the Vestries shall think it necessary to have more than one great Engine or Hand Engine, they may provide it at the Parish Charge, by an Assessment to be made as by the former Act, and to be under the same Regulations.

The Vestries may rate and assess such Sums of Money as are necessary to defray the Charge of providing and maintaining the Engines, Stop-blocks, and Fire-cocks, and other Implements and Materials, and for Payment of the said Rewards ; which Rates being confirmed as the Poor-Rates, may be levied in like Manner. See the Act at large.

18 A. c. 14. The Clause in the Act 6 *Anna.* that an Action shall be had against any Person in whose House or Chamber any Fire shall happen, or any Recompence be made by such Person for any Damage suffer'd, and that if such Action shall be brought, the Defendant might plead the general Issue, and give this Act in Evidence, and if he recover, shall have treble Costs, is now by this Act made perpetual.

*A Warrant against Churchwardens for not fixing
Stop-blocks.*

To the Constable of, &c.

Lond. ff. **W**Hereas T. S. and J. B. Churchwardens of the Parish of St. Martin's Ludgate, in the City of London, have been duly convicted before us J. M. and N. P. two of his Majesty's Justices of the Peace in and for the said City, that the said Churchwardens have since the first Day of May, which was in the Year of our Lord, 1708, made Default in placing, fixing and continuing Stop-blocks of Wood, with a Two-Inch Plug on the Main-pipe, belonging to the Water-work in the said Parish, contrary to the Law in that Case made and provided, by Reason whereof they have forfeited 10l. These are therefore to require you, to levy the said Sum of 10l. by Distress and Sale of the Goods of the said Churchwardens, vrending to them the Overplus, if any such shall happen to be; and that you pay one Moiety thereof to R. W. of, &c. who first informed us of the said Offence, and the other Moiety to the Overseers of the Poor of the said Parish of St. Martin's where the said Default was made as aforesaid, for the Use of the Poor of the said Parish. And hereof fail not. Given, &c.

The like Warrant, *mutatis mutandis*, against Churchwardens, for making Default in having and keeping in good Order and Repair, one large Engine, and an Hand-Engine, Leather Pipe and Socket.

A Warrant for an Engine-Keeper to recover 30s.

To the Constable, &c.

Lond. ff. **W**Hereas due Proof hath been made on the Day of the Date hereof, before us J. O. and H. H. two of his Majesty's Justices of the Peace, in and for the said City of London, That C. R. Engine-Keeper, did first bring in a Parish-Engine, to help to extinguish a Fire which lately happened in the said Parish; which Engine was then in good Order, and Compleat, with a Socket, Hose and Leather Pipe; by Reason whereof, the Churchwardens of the said Parish ought to have paid unto the said C. R. the Sum of 30s. pursuant to the Statute in that Case made and provided, but have hitherto made Default in Payment thereof. These are therefore to require you to levy the said Sum of 30s. by Distress and Sale of the Goods of the said Churchwardens, and that you pay the said Sum to the said C. R. And hereof fail not, &c.

A Mit-

A Mittimus of a Servant for negligently keeping the Fire.

To the Constable, &c. and to the Keeper of the House of Correction.

Suffex, ff. **W**Hereas T. L. Servant of W. N. of, &c. was on the Day of the Date hereof lawfully convicted before us R. B. and G. G. Esquires, two of his Majesty's Justices of the Peace for the said County, by the Oath of W. Y. of, &c. That he the said T. L. did on the Day of, &c. last past, through Negligence, fire or cause to be fired, the Dwelling-house of the said W. N. in the Parish of H. aforesaid, by Reason whereof he hath forfeited the Sum of 100 l. pursuant to the Statute in that Case made and provided: And whereas the Churchwardens of the Parish of H. where such Fire did happen, did immediately after the said Conviction demand of the said T. L. the aforesaid Sum of 100 l. the same being forfeited and to be paid to them, to be * distributed as by Law is directed; but the said T. L. hath refused to pay the same: These are therefore

* Viz. Amongst the Sufferers, and in such Portions as the Churchwardens shall direct.

to require you to convey the said T. L. to the House of Correction at L. and to deliver him to the Keeper thereof, together with this Warrant: Who is hereby commanded to receive the said T. L. into his Custody, and to keep him in the said House of Correction to hard Labour for the Space of eighteen Months next ensuing: And for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

A Warrant against an Owner of an House, and Head-Builder, for building contrary to the Act.

To the Constable, &c.

London, ff. **W**Hereas G. C. Owner of a new House in Fleet-street, was on the Day of the Date hereof convicted before us, &c. by the Oath of W. D. of, &c. for that he the said G. C. did, after the first Day of May, which was in the Year 1708, together with T. D. of, &c. Mason, who did undertake to build the said House, accordingly build the same without Party-Walls between House and House, made either of Brick or Stone, &c. and did make, or suffered to be made, Mundillions or Cornices of Timber or Wood under the Eaves of the said House, and did not build, or cause to be built, the Front and Rear Walls of the said House either with Brick or Stone, or carry the same above two Feet and an Half high above the Garret Floor of the said House, nor cope it with Stone or Brick, contrary to the Law in that Case made and provided, by Reason whereof each of the said Persons have forfeited the Sum of fifty

fifty Pounds: These are therefore to require you forthwith to levy the respective Sums of fifty Pounds by Distress and Sale of the respective Goods of each of the said Persons; and that you pay one Moiety thereof to W. D. of, &c. who first informed us of the said Offence; and the other Moiety to the Churchwardens of the Parish of St. Dunstan's in the West, where the said Houses were erected, for the Use of the Poor thereof: And hereof fail not. Given under our Hands and Seals, &c.

A Mittimus for Want of a Distress.

To the Keeper of the Gaol of Newgate, &c.

London, ff. **W** Hereas T. D. Mason and Head-Builder of a House newly erected in the Parish of St. Dunstan's in the West in London, was lawfully convicted before us R. B. and G. G. &c. for that he, on the sixth of August last past, did erect and build the said House in the Parish aforesaid, and did make, or suffer to be made, Mundillions or Cornices of Timber or Wood under the Eaves thereof, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited fifty Pounds: And whereas the said Sum cannot be levied by Distress and Sale of the Goods of the aforesaid T. D. who, for Want of such Distress, is to be imprisoned: These are therefore to require you to convey the said T. D. to the Common Gaol of Newgate, and to deliver him to the Keeper thereof: Who is hereby required safely to keep him in his Custody until Payment shall be made of the said 50 l. as the Law directs, &c.

The Form of a Testimonial, &c. of a Loss by Fire.

Suffex' ff. **T**O all to whom these Presents shall come, T. P. R. B. and G. G. Three Justices of the Peace for the County aforesaid, send greeting: We have, at the Petition of our Neighbours, T. P. R. D. R. R. and J. O. who are the Bearers hereof, declared, and do hereby declare, That on the second Day of January, &c. between the Hours of, &c. a sudden and lamentable Fire happened in the House, &c. which in a few Hours burnt down the several Dwelling-houses of the Persons above-named in the Parish of, &c. and other Out-Houses thereunto belonging, and great Part of their Household-Goods, and other Goods, and Corn and Hay, to their great Loss and Impoverishment: And forasmuch as the said Petitioners in the Behalf of themselves, and their Neighbours are now compelled, by Reason of the said Losses, to implore the Relief of charitable People; and we knowing their Case, as above represented, to be very miserable, have therefore, as much as in us lieth, given Leave unto them, and every one of them, to go from Place to Place within the said

said County, to ask, receive and take the Charity and Benevolence of all well-disposed People, as well to relieve them in their present Necessities, as towards the Recovery of their said Losses: And we desire all Ecclesiastical Persons, to whom these miserable People shall come and address themselves in this Behalf, to exhort the Parishioners in their respective Parishes, to extend their Charity to these distressed Persons; and that those whom it concerneth, would be aiding and assisting to them in the Collection thereof. In Witness, &c.

Fish and Fishing.

TAKEN unlawfully, without the Consent of the Owner of the Water, the Offender must pay Damages, not exceeding treble; and to the Poor not exceeding 10 s. This to be left to the Discretion of the Justice; and if not able, or no Distress, must be committed, not exceeding one Month, unless he give Security to the Party injured, not exceeding 10 l. never to offend in the like Nature. 22 & 23 Car. 2.

Conviction is to be by Confession, or Oath of one Witness before a Justice. *Ibid.*

Taken unlawfully in *Severn*, the Offender forfeits 5 l. Fish and Instruments; and if he destroy the Spawn, forfeits 40 s. and Instruments, between Poor and Prosecutor.

30 Car. 2.
cap. 9.

Conviction is to be by Information or Indictment at the Sessions. 30 Car. 2. cap. 9.

Justices in *Gloucester*, *Salop* and *Worcestershire*, are Conservators of that River; and one or more of them may grant Warrants to search suspected Houses, &c. *Ibid.*

1 Eliz.
cap. 7.

Barbel, { Must not be taken under 12 Inches long; Forfeiture is 20 s. the Fish taken, and the Engine with which 'tis taken. 1 Eliz. cap. 7.

By this Statute, all Persons who have a Jurisdiction of Conservancy upon Streams of Water, have Power to hear and determine Offences upon the Oaths of twelve Men; and the Justices of Peace, being generally Conservators of Rivers, may therefore enquire concerning it.

But by the express Words of the Statute, the Justices in Sessions have Power, &c. upon Default of Presentments in Leets within a Year; the Stewards of Leets being enjoined to give the Statute in Charge, or forfeits 40 s. between King and Prosecutor.

And if the Jury forbear to present the Offences in this Statute, then the Steward may impanel another to enquire of their Default; which being found, the Jury shall each forfeit 20 s. a-piece.

By this Statute, *Billingsgate* is made a free and open Market ^{10 & 11} every Day in the Week for all Fish; and those who buy Fish ^{Will.} there, may sell them again by Retail.

And likewise the Statute of 5 *Eliz.* is enforced, by which no Man was to set a Price, restrain or demand any Tax or Toll for Sea-fish caught by the King's Subjects, and brought into any Place in the Kingdom, under the Penalty of the Forfeiture of the Fish so tolled: But by this Act, the Punishment for taking or demanding any Toll, or other Imposition for *Sea-Fish* of *English* catching, is 10 *l.* one Moiety to the King, the other to him who will sue for the same.

And because the Fishmongers had got an ill Practice, by employing some of the Trade to buy up all the Fish brought to *Billingsgate*, and then to divide the same amongst three Brethren by Lots; and by this Means sold the Fish at what Rate they would; therefore this Practice was prohibited, and the Employer employed to buy any Quantity of Fish to be sold by Lots, and the Fishmonger who should buy in *Billingsgate* any Quantity but what shall be for his own Sale and Use, forfeit for each Offence 20 *l.* one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Prosecutor.

Herrings,

Shall not be sold at Sea before Fishermen come to Land. 31 *Ed. 3. cap. 2.*

Of *English* catching, must be packed in lawful Vessels, and equally packed at both Ends by a sworn Packer, who must mark the Vessels, &c. 13 *Car. cap. 1*

Price of a Last of Herrings in *Great Tarmouth* must be 40 *s.* a Last, and must consist of 10000 Herrings.

Must not be brought into *Tarmouth* Haven between *Michaelmas* and *Martinmas*; Punishment is Imprisonment during the King's Pleasure, and Forfeiture of Herrings.

Two Lasts of Shotten Herrings equal to one of full Herrings. 31 *Ed. 3. cap. 2.*

Lobsters.

Must not be sold under eight Inches from the Peak of the Nose to the End of the middle Fin of the Tail, Forfeiture is 1 *s.* for each Lobster; a Moiety to the Poor of the Parish where the Offence is committed, the other Moiety to the Prosecutor. Conviction is to be before the Chief Magistrate of any Town-Corporate, or next Justice where the Offence is committed. 10 & 11 *W.*

Used

Fish and Fishing.**Nets. (See
Dogs.)**

Used to destroy Fish, may be burnt by one Justice. Second Offence, Commitment for a Quarter of a Year.

Third Offence, Commitment for a whole Year; and as the Offence, so the Punishment is to encrease. 17 R. 2. cap. 9.

Drag-Nets must not be used within five Miles of the Mouth of any Haven, unless three Inches in Mesh, except in *Norfolk*, for taking of Herrings, Pilchards, &c. 3 Jac. cap. 12.

Canvas-Nets, or other Devices, shall not be used to destroy the Spawn; the Offender forfeits his Nets, and 10s. to the Poor, to be levied by Warrant from one Justice, &c. 3 Jac. cap. 12. 1 Eliz. cap. 17.

Fishing on the Shore of *Cornwall* or *Devon* with a Drift-net, Trammel, or Stream-net, or other Nets of any Sort, from the first of *June* to the last of *October*, forfeits the Nets or Value of them, and must be committed for a Month. 13 & 14 Car. 2. cap. 28.

Pilchards,

If any besides Owners, Partners or Adventurers in the Craft of Fishing, pack Pilchards in Casks to be sold or transported, except bought of those Owners, or with their Leave, forfeits the Value to the King and Informer. 13 & 14 Car. 2. cap. 28.

Parlainers of Pilchards must pay the treble Value, or be sent to the House of Correction; and suspicious Persons flocking about Boats, Nets, or Cellars where Pilchards are, being warned to be gone, and refusing, must, upon Complaint to one Justice, pay 5s. to the Poor, or be put into the Stocks five Hours. 13 & 14 Car. 2. cap. 24.

Pike.

Must not be taken under ten Inches; Forfeiture *ut antea* in Barbels.

Salmon,

Must not be taken, from the 8th of *September* to the 11th of *November*; nor young ones, from the midst of *April* to the 24th of *June*.

First Offence, Nets burned.

Second Offence, Commitment for a Year; and as the Offence, so the Punishment is to encrease. 13 Ed. 1. cap. 7.

Must

Salmon,

Must not be under 16 Inches long when caught, nor taken out of Season: Forfeiture *ut prius* in Barbels, *quod vide*.
Must not be taken out of Season, or shorter than eight Inches: Forfeiture as in Barbels, *quod vide antea*.

By a Statute made 4 & 5 *Anna*, this Statute of 13 *Ed. 1.* shall extend and be in Force, as well to the Rivers, Creeks and Waters in *Hampshire* and the South Parts of *Wiltshire*, as to the Waters of *Humber*, *Ouse*, *Trent*, and other Waters in the old A^ct mentioned, and under the same Penalties as therein mentioned.

Two Justices of Peace, residing within six Miles of the re-^{4 & 5} spective Rivers in *Hampshire* and *Wiltshire*, may under their Hands and Seals appoint Overseers of this Statute, who being sworn before the said Justices, may take Offenders, &c. and destroy their Nets and Engines where they shall be found, and which are kept or used contrary to any A^ct relating to Fishing. ^{Anno.}

The Overseers may bring the Offenders before a Justice of Peace, who for the first Offence shall forfeit not under 20 s. nor above 5 l. for the second Offence not under 40 s. nor above 10 l. And as the Offence shall encrease, so the Penalty is to be doubled by the Justice before whom the Conviction shall be made.

The Conviction is to be upon Oath of one or more Witnesses, or Confession of the Offender; and a Moiety of the Forfeiture is to be to the Informer, and the other Moiety to the Poor of the Parish where the Offence shall be committed; and if the Party is not able, or shall not pay it on Demand, then the Justice, before whom the Conviction shall be made, may send him to the House of Correction, there to be kept for 3 Months.

No Person must take *Salmon* at any Time after the 30th of *June* till after the 11th of *November*, or offer any to Sale, under the like Forfeitures and Imprisonment.

And if it shall happen that any *Salmon* shall go into the Ditches, Cuts or Water-Carriages of Meadow-Grounds within the Time limited and restrained by the A^ct, that then the Owners or Tenants of such Grounds shall permit them to pass into the main Rivers, and not by any wilful Means destroy them under the like Penalties.

Owners and Tenants of Mills in the said Counties, upon any of the Waters or Rivers there, shall keep open a small Hatch of a Foot square in the direct Stream, where there is no Wheel sufficient for the *Salmon* to pass and repass, from the 11th Day of *November* to the 31st Day of *May*, and shall not use

Fish and Fishing.

use any Nets or other Devices in that Hatch, during the said Term, to kill or take the *Salmon*, under the like Penalties.

If they lay Pots to catch *Eels* after the first of *January* to the tenth of *March*, they must set Racks before them to keep out the old *Salmon*; and after the said 10th of *March*, to the 30th of *May*, they shall lay no Pot but what shall be wide enough to let the Fry of *Salmon* pass through to the Sea; and shall not take or keep, or offer to Sale, any of the young Fry during that Season, under the like Penalties.

No *Sea-Trouts* shall be taken in any of the said Rivers or Creeks, or Arms of the Sea in the said Counties, after the 30th of *June* to the 11th of *November*, under the like Penalties.

All which are to be levied by a Warrant, under the Hand and Seal of the Justices, before whom the Conviction was made, by Distress and Sale of the Offender's Goods; and for want of Distress, then to the House of Correction.

The Lord Mayor and Aldermen of *London*, and the Justices of Peace of the respective Counties, for all Offences in their several Jurisdictions, in wilfully killing or exposing to Sale any *Spawn*, Fry, or Brood of Fish, or Spat of Oysters, or any unwholesome Fish, or in catching, killing or destroying any Fish out of Season, or by exposing such Fish to Sale, or by wilfully buying, harbouring, receiving, or using as Food for Hogs, or otherwise, any *Spawn*, Fry, &c. or catching *Salmon* between 24 *August* and 11 *November* in any Year, may upon View or Complaint made, examine and determine the same on Oath, and upon Conviction impose any Fine not exceeding 10*l.* nor less than 5*s.* to be levied by Distress and Sale of the Goods of the Offender, unless the Fine be immediately paid, or good Security given to abide the Order of the Court of *Conseroancy* upon the Conviction by the Lord Mayor, &c. or the Court of Quarter-Sessions upon the Conviction by the Justices, or one of them, in case the Offender shall think fit to appeal to either; and if no Distress can be had, then to be committed for any Time, not exceeding 2 Months, to the House of Correction, without Bail.

If the Offence is committed within the Jurisdiction of the Lord Mayor, then one Moiety of the Fine shall be paid to him, the other to the Informer; and if elsewhere, then one Moiety to the Poor of the Parish while the Offence shall be committed, the other to the Prosecutor.

A Warrant to levy the Fine.

To the Constable, &c.

Surrey, ss. **W** Hereas Complaint hath been made unto me R. B. Esq; one of his Majesty's Justices, &c. That T. P. of L. in the said County Labourer, did on the 28th Day of this Instant July, at L. in the said County aforesaid, * kill and destroy the * Or as the Spawn of Fish in the River, &c. contrary to the Statute in that Case Offence is. made and provided, of which said Offence the aforesaid T. P. was on the, &c. duly convicted on Oath before me; by reason whereof I did then impose the Fine of † 20 s. upon him: These are therefore to re- † Any Sum quire you forthwith to levy the said Sum of 20 s. upon the Goods and not exceed- Chattels of the said T. P. by Distress and Sale thereof; and that you ing 10 l. pay one Moiety thereof to S. E. of, &c. who is the Prosecutor, and nor less than 5 s. the other Moiety to the Churchwardens and Overseers of the Poor of the Parish of L. where the said Offence was committed, for the Use of the Poor thereof. Given, &c.

Master of a Vessel importing or selling Fish in England, taken, Georgii by any Foreigner or Stranger, (except Protestants dwelling here) cap. 16, or exchanging them for Goods; and being lawfully convicted before one or more Justices of the County where the Offender lives, shall forfeit 20 l. a Moiety to the Informer, the other to the Poor of the Parish where the Offence was done, to be levied by Distress, &c. and in Default thereof, to be committed for 12 Months.

Nets for fishing on the Coasts of England, (except for Herrings, Pilchards, Sprats, Lavidnian) their Mesh shall not be less than 3 Inches and one half from Knot to Knot; and no false or double Bottom, or any Net of legal Size behind the other; the Penalty is Forfeiture of the Nets, and 20 l. to be recovered as before.

Such illegal Nets proved to be forfeited, shall by a Warrant from a Justice be ordered to be burnt.

		Inches.		Inches.
Every of these Fishes must be Inches long from the Eye to the Extent of the Tail, Viz.	Basse	12	Mullet	12
	Bret	16	Pearl	14
	Brill	14	Plaice	8
	Codlin	12	Sole	8
	Dab	8	Turbet	16
	Flounder	6	Whiting	12

Fish brought to Shore, exposed to Sale, or changed for Goods, not of that Length, are forfeited, and 20 s. for every Offence; one Moiety to the Informer, the other to the Poor of the

Fish and Fishing.

the Parish, to be levied as aforesaid, and for want of a Distress, to be sent by a Justice's Warrant to the House of Correction, and to be whipt and kept at hard Labour six Days.

The Prosecution must be within one Month after the Offence.

Bringing any Nets, or doing any Thing in these Rivers, whereby the <i>Salmon</i> , not 18 Inches or more from the Eye to the Middle of the Tail, may be hindered from going up to spawn.	<i>Aire</i>	<i>Ribble</i>
	<i>Calder</i>	<i>Severn</i>
	<i>Derwent</i>	<i>Swaile</i>
	<i>Dee</i>	<i>Team</i>
	<i>Dun</i>	<i>Tees</i>
	<i>Eure</i>	<i>Trent</i>
	<i>Mercy</i>	<i>Ware</i>
	<i>Owze</i>	<i>Wye.</i>

Or he who shall from 31 *July* to 12 of *November*, hurt any *Salmon* with Nets, or who shall after the 12th of *November*, fish in any of these Rivers with Nets, not allowed by the Statutes, 1 *Eliz.* and 30 *Car.* 2. and shall be convicted by any Justice, &c. where the Offence was committed, shall forfeit 5 *l.* besides the Fish and the Nets, which must be cut into Pieces.

Salmon sent to *London*, &c. from any of the said Rivers shall not weigh less than six Pounds; any Person buying a *Salmon* of less Weight, and being thereof convicted before a Justice, &c. forfeits 5 *l.* and the Fish bought.

A Moiety of these Forfeitures to the Informer, the other to the Poor of the Parish where the Offence was committed, to be levied by a Warrant of a Justice, &c. by Distress, &c. before whom the Conviction was, and for Want thereof to be sent to the House of Correction for 3 Months.

An Appeal lies to the Quarter-Sessions, whose Determination shall be final.

9 Geo.

Any Person who after 1 *June* 1723, shall be armed, and having his Face black'd or disguised, shall unlawfully take away, or steal any Fish out of any River or Pond, or break down any Head or Mound of a Fish Pond, whereby the Fish shall be lost, shall be guilty of Felony without Benefit of Clergy.

A Warrant to levy the 5l. forfeited.

To the Constable, &c.

1 G. c. 16.

Kent, ff. **W**Hereas Complaint hath been made unto D. P. Esq; one of his Majesty's Justices of the Peace of the said County, that I. E. of, &c. did on the 23d Day of July last past import into D. in the said County, and in the Realm of England, a certain

certain Quantity of fresh Fish taken by Foreigners and Strangers, other than the Protestant Strangers dwelling in England *, contrary to the Statute in that Case made and provided, of which said Offence the aforesaid I. E. was lawfully convicted before me on the Day aforesaid, by reason whereof he hath forfeited the Sum of 20l. These are therefore to require you to levy the said Sum of 20l. on the Goods and Chattels of the said I. E. by Distress and Sale thereof, rendering to him the Overplus if any such shall be; and that you forthwith pay one Moiety thereof to R. P. of, &c. who first informed me of the said Offence, and the other Moiety to the Churchwardens and Overseers of the Poor of the Parish of D. where the same was committed, for the Use of the Poor thereof; and if no such Distress can be had, that then you certify me thereof, that such further Course may be taken therein as directed by Law. Given under my Hand and Seal, &c.

* Or fifth on the Coasts of England with a Net with Meshes of less than 3 Inches and an half from Knot to Knot, to catch Fish, other than Herrings, Pilchards, Sprat or Lavidnian,

contrary to, &c. or as the Offence is, *mutati, mutandis*.

A Warrant to burn the Nets.

To the Constable, &c.

Kent, ff. **W**Hereas I. E. of, &c. was on the Day of the Date hereof lawfully convicted before me, D. P. Esq; &c. for fishing on the Coasts of England with a Net with Meshes of less than 3 Inches and an half from Knot to Knot, contrary to the Statute in that Case made and provided, by reason whereof the said Net is forfeited: These are therefore to require you forthwith upon the Receipt hereof to burn, or cause the said Net to be burnt, and for your so doing, this shall be your Warrant. Given under my Hand and Seal, &c.

One claimed *solum piscariam* in the River Exe, by a Grant from the Crown, which he could not have, because the Subject hath a Right to fish in all navigable Rivers.

Wears. { Erected along the Sea-shore, Haven or Creek, or within 5 Miles thereof, the Offender forfeits 10 l. to the King and Prosecutor.

He who unlawfully breaks down a Fish-Pond Head, or fishes without Leave of the Owner, must be committed for three Months, and be bound with Sureties to his Good Behaviour for seven Years, and the Party grieved may in the Sessions recover treble Damages; but upon Acknowledgment of his Offence in Sessions, and satisfying the Party grieved, the Justices may release the Good Behaviour. 5 Eliz. 21.

An Indictment for Fishing without the Consent of the Owner.

Middl' ff. **J**UR', &c. quod J. O. de, &c. in Com' pzed' Yeoman, 3 die Januarii, Anno, &c. vi & armis clausum cuiusdam A. S. apud P. in Com' pzed' fregit & in separali Piscaria sua ibid' illicite piscatus est, & Pisces inde, viz. duos Salmones & centum Trutas, &c. ad balenciam, &c. adtunc & ibidem cepit & asportabit & herbam suam ad balenciam, &c. ibidem nuper crescen' conculcabit & consumpsit, & alia enormia ei intulit contra Pacem Dom' Regis nunc, &c.

An Indictment for Fishing in a Pond, &c.

Suffex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Labourer, &c. 1 die Maii, Anno, &c. & diversis diebus & vicibus tam ante quam post pzed' proximum diem Maii apud H. pzed' in Com' pzed' vi & armis in uno stagno ibidem existen' libero tenemento A. S. Gen' cum retibus & engin' illicite piscatus fuit & diversos Pisces inde, viz. Centum Trutas, &c. tunc & ibidem cepit & asportabit contra Pacem, &c.

Flax. See Wool.

Force Lawful.

IN what Cases Doors may be broken open :

Viz. To apprehend. } For Treason, Felony, or Suspicion thereof, Any Person, who hath wounded another very dangerously, and flieth for the same to a House.
A Popish Recusant Excommunicate.

2. An Affray in the House, and the Doors shut.
3. Upon a Warrant for the Peace or Good Behaviour, *quare.*
4. Upon a *Capias Utlagatam* in a Personal Action, and upon a *Capias pro fine* directed to the Sheriff.

A Man was outlawed for want of an Appearance; the She-Hob. 263; riff came to his House with a *Latitat*, and with a *Capias Utlagatum*, without the Privy of the Plaintiff, and the outward Door being open, he entered; then he and his Company shut the Door and drew their Swords, and went up to the Chamber where the Man was in Bed, and knocked gently at the Door, which was lock'd, but did not tell who they were, or for what they came; but the Door not being immediately opened, they broke it open, and arrested the Person upon the *Latitat*, and took Bond for his Appearance, and 40 s. for suing out a *Superfedeas* to the Outlawry; but the Sheriff was fined 200 l. for this Outrage and Terrour, and for not telling who he was, that the Door might be opened without Violence.

So where the Sheriff had a *mesne Process* against one, and came Hob. 624 to his House and knocked gently at the Door, the Wife open'd it a little to see who it was, and he forced in with his Sword drawn, and broke open the Door where the Defendant lay; This was unlawful, because the first Entry was so, for the Opening of the Door was by Craft and Violence, which was intended.

But if upon such *Process* a Bailiff catch the Defendant by the Hand, as he held it out of the Window; this is such a Taking, Vent. 306 that he may justify the Breaking open the House.

5. Upon a Forcible Entry or Detainer, found by Inquisition before the Justices, or upon their own View.
6. Upon a Judgment in Ejectment; but then the Officer must signify the Cause of his coming. 5 Rep. 91.
7. In all Cases where the King is Party, or hath any Interest, &c.

But you cannot break open a Door upon an Execution at Jones 425 the Suit of a common Person, for 'tis illegal; and if the Officer is kill'd in doing it, 'tis only Manslaughter.

Flight. See Forfeiture.

Forcible Entry.

A T Common Law, where a Man had a Title to Lands, he might not only enter but detain by Force; and tho' it was done in the Presence of an Officer, yet he had no Power to interpose, unless some great Mischief (as Murder, &c.) was committed.

And this was the Occasion of making the Statute of 5 R. 2. cap. 7. which prohibits the Force, tho' the Person had a Title,

Forcible Entry.

and appoints that the Justices should inquire into it, and not otherwise; that is, in their Sessions.

This being for that very Reason found to be inconvenient, a quicker Remedy was provided to remove the Force, by the Statute of 15 R. 2. which gives one or more Justices Authority to take sufficient Power with them, and to View the Place where the Entry and Detainer is, by Force, and to commit the Offenders, there to remain till they have made Fine and Ransom to the King.

By this Statute likewise, the Sheriff and all others are to be assistant to the Justices, upon Pain of Fine and Imprisonment.

But still there remained some Inconveniencies which this Law did not remedy.

1. As if the Entry was peaceable, and the Detainer by Force.
2. If the Persons were gone before the Justices came, they could proceed no farther.
3. They had not Power to give Restitution to the Party grieved,

All these Matters were remedied by the Statute of 8 H. 6. which gives Power to one or more Justices, by Warrant, to command the Sheriff to summon a Jury to enquire of the Force, and to seize the Tenements as well in the Absence as Presence of the Offender.

It likewise appoints the Statute of 15 R. 2. to be put in Execution, altho' the Detainer by Force was after a peaceable Entry; and all at the Costs of the Party grieved.

It likewise inflicts the Penalty of 20 *l.* upon the Sheriff neglecting his Duty, to be recovered by Indictment at Sessions, and divided between King and Prosecutor.

3 Cro. 199. But the Justices cannot make Enquiry into a Force, after a peaceable Possession for three Years.

And by the Statute of 31 Eliz. no Restitution can be made upon Indictment of Force, &c. where the Party had such a quiet Possession for three Years as aforesaid.

Afterwards some Doubts arising, whether the Justices had any Power but only in Cases of Freehold; this was the Occasion of making the Statute of 21 Jac. cap. 15. by which they have Power to give Restitution to Tenants for Years, Tenants by *Elegit*, Statute, &c. Copyholders, &c. as well as to Freeholders, put out or detained by Force; So that now a complete Remedy is given,

1. Against those who enter with Force, and continue the Possession peaceably.
2. Against

Forcible Entry.

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2. Against those who enter peaceably, and hold out with Force.
3. Against those who enter and hold out with Force.

If the Proceedings are upon this Statute of H. 6. of Necessity there must be a *Disseisin* of the Freehold alledged; 'tis a Term of Art not to be supplied by any other Word.

It must be *manu forti*, and 'tis Force if he enter to commit a Trespass, tho' the Party doth not quit the Possession; but if the Entry is peaceable, then 'tis *Disseisin*, not Force; being provided with Weapons, threatening Life or Loss of Limbs, breaking open Doors, or entering the Doors being open, with unusual Armour or Weapons, ejecting or distraining for Rent with Force.

The Reason why it must be set forth to be done *manu forti*, is to distinguish it from all other Trespasses; those are peculiar Words adapted to an Indictment for this Offence: And therefore *vi & armis*, or *fortitudine & potentia magna*, or such like Words, tho' they may signify the same Thing, yet will not make the Indictment good.

By denying Entrance to the Justice, tho' by one Person.

By keeping Cattle in another Man's Ground, claiming Right of Common, &c.

Menacing to keep the Possession, tho' no Force used.

Resisting, threatening, or rescuing in Cases of Distress for Rent or Common, one Justice may remove the Force, record it upon View, but cannot make Restitution.

One alone, without the Help of another.

Indictment for a forcible Entry and Detainer, the Jury find the Entry with Force, but the Detainer Peaceable; and this was held sufficient to grant Restitution upon it.

So where the Jury found *quoad* the Entry *Ignoramus*, and *quoad* the Detainer *Billa vera*; and upon Restitution awarded by the Justices of Peace, B. R. set it aside, and granted a Restitution, because the Indictment being entire for the Entry as well as the Detainer, and the Jury having found but one, 'tis therefore void. *Yelv.* 99, 100. 2 *Cro.* 151.

Indictment *quare in medietatem intravit* is void, for the Entry Palm. 419. must be in to the Whole.

An Infant above 14, and a Feme-covert, for which they may be committed and fined, tho' 'tis Prudence not to commit the Infant, and the Husband shall not be charged with the Fine of his Wife.

If several come with an Intention to enter, and one commit the Force, all are guilty, tho' the other are peaceable.

If more than three, 'tis a Riot, and then the two next Justices may enquire within a Month by a Jury.

What is a Forcible Entry.

Forcible Detainer.

What Persons may be guilty of both. Sid. 97. 414. contra

The Power of the Ju-
stices upon
the Sta-
rutes of
15 R. 2. c. 2.
one Justice.

He may go to the Place and take the Assistance of the Sheriff if he thinks fit, may break open the Door if resisted, and may arrest and commit the Offenders; he may command any one to assist him, and commit and fine those who refuse. If he sees the Force, he may record it, and commit the Offenders, for his View is a Conviction; and this Record being certified in B. R. the Court will grant Restitution, and assess a Fine. 8 Rep. 120.

* 15 R. 2. the *
cap. 2.

The Defendant was convicted for a forcible Detainer, upon the View of a Justice of the Peace; setting forth that he held a Chamber in an House in such a Street and Parish by Force, but did not shew whose House it was, nor whether the Chamber was backward or forward, or how many pair of Stairs high, and the Commitment was to Newgate, but it did not set forth that Newgate was the County Gaol, and the Statute expressly requires that the Commitment should be thither.

But the Court would not intend that there were two Chambers on one Floor; so they held that the Chamber was sufficiently described; however, the Conviction was quashed, for tho' they would intend that Newgate was the County Gaol, yet the Words in the Record being all in the preterperfect Tense, when they should be in the present Tense; for that Reason it was quashed.

Upon the
Statute of
8 H. 6. two
Justices.

If the Offenders are gone before the Justices come, then they may direct their Precept to the Sheriff, to impanel 24 Men of 40 s. per Annum Freehold each of them; and 12 must be sworn to enquire of the Force; and when found, the Justices may either themselves put the Party in Possession, or make a Precept to the Sheriff for that Purpose: And this must be done, tho' they view the Force, if they intend to put the Party into Possession.

The same Justices before whom the Force was found, having made a Precept to the Sheriff to restore the Party, may grant a *Superfedeas* to stay Restitution if they see Cause.

But if the Party doth not think fit to apply himself to the Justices, then he may have an Action of Trespass against the Defendant, (who had no Title of Entry, and entering with Force) and may recover treble Costs and Damages; but if his Entry was upon good Title, tho' with Force, then you must proceed by Indictment.

Lawful Detainer, { Continuing in Possession three Years
peaceably, he may justify the Detainer
by Force.

But must not resist the Justice when he comes to view.

This Possession may be pleaded to an Indictment for a Force, which will not only excuse the Fine and Commitment, but prevent the Restitution,

The Entry must be *vi & armis*, or peaceably, and detaining with Force, according to the Words of the Statute of 8 H. 6. *Roll. Abr. 2. pag. 80.*

The Quality of the Thing upon which the Entry was made must also be set forth, as into a Messuage, Meadow, Wood, &c. for entering in *Tenementa* generally is not good, because of the Incertainty; for it may extend to a House or Cottage. *2 Rol. Rep. 46.* So an Entry into two Clofes *Prati sive Pastura* is not good. *Rol. Abr. 2. pag. 81.*

It must be either *manu forti*, or *multitudine Gentium*, and it must conclude *adhuc extratenet*, for without these Words there cannot be any Restitution; and likewise *contra formam Statut.* *Rol. Abr. 2. pag. 82.*

It must be certain, therefore an Entry into *Messuagium*, or *Mod. 73.* *Cottagium sive Tenementum*, is void. *Rol. Abr. 2. p. 80.*

But in *Clausum* is good, for that is certain enough.

And as to the *Certiorari*, that must be delivered in open Sessions, which is a *Supersedeas*.

But the Traverse is no *Supersedeas*, because the Force being found upon the Indictment, the Justice may restore the Party grieved, or otherwise may certify the Indictment to B. R. but he that tendereth the Traverse must bear all the Charges of the Prosecution, both before the Justice, and in B. R.

If the Justice will try the Traverse presently, it must not be by the Jury who found the Force, but by a new Jury, to be returned by the Sheriff the next Day, and this Traverse must be in Writing.

The Justice may direct his Precept to the Sheriff to impanel a Jury *ut prius*, and upon Default of their Appearance, may award an *Alias* and *pluries*, and return 40 s. Issues upon the second Precept on each of the Jury, and 5 l. Issues on the third Precept, and at every Time afterwards double.

The Expulsion must be out of House or Lands, and so set forth in the Indictment.

In the Indictment the Estate must be set forth, for 'tis not enough to alledge generally that *Possessionatus fuit*, because a Tenant at Will may be so possessed, and he is not within either of the Statutes. *Sid. 102.*

But since I have mentioned the Statutes, I must likewise take Notice, that 'tis not the best Way to recite them in the Indictment; for if misrecited in any Particular, it will be quashed. *Cro. Eliz. 93, 96, 106, 307, 697. 1 Bulst. 218.*

The Indictment was for a Forceful Entry into a Copyhold, viz. That the Defendant *eject & disseisavit*, for which Reason it was quash'd, because *Disseisin* is applicable only to *Freehold*; and therefore in all Cases, except for a *Freehold*, it ought to be *eject, expulit & amovit.* *Raym. 67. 4 Inst. 176.*

And

Forcible Entry.

And even in the Case of Freehold, *expulit seu disseisvit* is void, because it is in the Disjunctive; for there must be an Expulsion and *Disseisin*. 1 Roll. Rep. 406.

And so is *disseisvit*, without shewing what Estate he had. 1 Vent. 306.

If it is for *disseising* the Landlord, and *expelling* the Tenant, tho' the Entry was made by Command of the Landlord, and he opposed Restitution, yet it was granted by B. R. for they may reform the several Degrees of Wrongs; but if it had been only for expelling the Tenant, he could not have Restitution. Tel. 81.

It must be *adhuc existens liberum Tenementum*, as well as *ad tunc*. 2 Cro. 214, 639. Lev. 1. p. 90.

Pleas to an
Indictment.

1. Quiet Possession for three Years before the Inquisition found. 31 Eliz. cap. 11. Raym. 84.

This must be understood of a Term of Years, but if it had been a *Freehold*, then he must set forth that he was seized, &c. and was in Possession for three Years, &c. and 'tis not material to shew how seiz'd, because 'tis not the Title, but the Possession which is requisite to be alledged. Sid. 156.

2. The Defendant may tender a Traverse.

3. He may demur to the Insufficiency of the Indictment.

4. And plead to the Insufficiency of the Jurors, not having 40 s. *Freehold*.

Or what
it is.

5. May bring a *Certiorari*, which is a *Supersedeas* for Tithes, Rents, &c. 1 Cro. 146.

Sid. 101.

To remove a Force out of a Parish Church or Parsonage Houses, tho' there is another Remedy by *vi Laica removenda*.

Restitu-
tion.

After Enquiry, the Justice may break open the House, and restore the Party himself, for none but he who is actually put out of Possession can be restored.

Where they find a Force, and make a Record of it on their own View, they may commit the Offenders, but cannot grant Restitution. 1 Vent. 308. Sid. 156.

It must be of House or Land, it cannot be of Rent Common, Advowson, &c. *Quere*.

Sid. 287.

If the Defendant traverse the Indictment, the best Way for the Justice is to certify it into B. R.

But after a Traverse, the Court cannot grant Restitution. Dyer 122. 1 Vent. 365. But in Dyer there is a contrary Opinion.

They cannot award Restitution after a *Certiorari* to remove an Inquisition of a Forcible Detainer.

If the Justices certify, That Complaint was made to them of a Forcible Entry into an House, and thereupon they went thither, and found it true, and removed the Force, and fined the Defendant 20 l. this Certificate is not good, because they do not shew the Time when the Complaint was made, which they

they ought to do, because such Certificate is in Nature of an Indictment, and traversable. 2 Roll. Rep. 39.

No other Justice or Justices (except B. R.) but he or they before whom the Force is found, can award Restitution.

But then the Force must be found by an Inquisition of twelve Men, or otherwise the Justice may be punished; but the Entry and Holding with Force being found, the Justice may reseise by Vertue of the Statute of 8 H. 6. cap. 9. and restore the Party to his Possession.

Or he may direct his Precept to the Sheriff for that Purpose, *Teste* by himself. *Dyer* 187.

And if the Sheriff return, that he cannot make Restitution, because he was resisted, he shall be fined, for he may raise the *Posse Com.*

The Justices upon an Indictment found, may give Restitution to a *Freeholder*, to a Tenant for Years, or by Copy of Court-Roll, to a Tenant by *Elegit*, Statute-Merchant or Staple. 21 *Fac. cap.* 15.

One Jointenant or Tenant in Common putteth out the other: *Quare* what the Justice can do there, because his Entry and Possession was lawful.

If an Indictment be removed, and no Prosecution the next Term, the Court may award Restitution.

A Man cannot justify the Breaking open of an House, by Vertue of a Warrant from a Secretary of State; and no House can be broke open, unless there is a Civil Officer present.

But if a Man hath a Warrant to apprehend another, and he breaks open the Door to execute it, and so mistakes the Law, he is not guilty of Felony, for that was not his Design. Now since there must be a Felonious Intent to make a Man guilty of Felony, and there being no such Intention appearing, the Party is only a Trespasser.

If after a Door is broke open, one of the Company steals any Thing, 'tis Felony only in him, and not in the rest, unless they were assenting to it.

The Record of a Forcible Entry upon the View of a Justice, upon the Statute of 15 R. 2.

Middl', ff. **E**GO H. P. Armig' unus Justiciar' Dom' Reg. nunc ad pacem in Com' pzed' conserband' assign' certifico quod 5 die Jan. Anno Regni, &c. J. O. de H. in Com' pzed' Yeoman questus est mihi quod T. P. de, &c. & alii perturbat' pacis dict' Dom' Reg' mihi ignoti 5 die Januarii, Anno supradicto in unum Messuagium cum pertin' adunc & adhuc erissen' liberum Tenement' R. B. Armig' ac in possessione pzed' J. O. pzo Termino 7 Annozum adhuc ventur' situat' in H. pzed'

Forcible Entry.

pred' in Com' pred' pacifice & quiete intraverunt & postea (viz.) pred' 5 die Januarii, Anno supradicto apud H. pred' in Com' pred' predictum J. O. a predicto Messuagio vi & armis (viz.) baculis, gladiis, &c. illicite & manu forti expuler' ejecer' & amover' & pred' J. O. sic deinde expuls' eject' & amot' a Messuagio pred' cum pertin' ut prefertur vi & armis illicite & manu forti adtunc & ibidem extratenuer' & detinuer' ad grave dampnum pred' J. O. & contra Pacem dict' Dom' Reg' nunc ac contra formam Statut' in hujusmodi casu edit' & probis' & unde pred' J. O. petit a me remedium & in hac parte relebari; Ego igitur prefat' H. P. immediate in propria Persona mea accessi ad Messuagium pred' cum pertin' & adtunc & ibidem inveniebam prefat' T. P. pred' Messuagium cum pertin' a pred' J. O. vi & armis illicite & manu forti extraten' & detinen' contra formam Statut' pred' super quo ego prefat' H. P. adtunc & ibidem causavi pred' T. P. capi & arrestari & ad Gaolam de H. in Com' pred' mitti ibidem remanere sub salva custodia donec inveniret coram me sive aliquo Justic' dict' Dom' Reg' ad pacem in Com' pred' conservand' assign' sufficient' securitatem personaliter comparere ad proximam Generalem Session' pacis dict' Dom' Reg' in Com' pred' tenend' ad respondend' transg' & contempt' pred' ac quod interim se bene gereret. In cuius rei Testimonium ego prefat' H. P. huic certificationi manum & sigillum meum apposui 7 die Januarii, Anno Reg', &c.

Another Record of Forcible Entry.

Sussex, ff. **M**emorand' quod T. P. de, &c. 3 die Januarii Anno Reg' &c. questus est mihi E. S. Mil' un' Justiciar' dict' Dom' Reg' ad pacem in dicto Com' conservand' assign' quod J. O. & J. S. de, &c. & alii pacis dict' Dom' Reg' perturbatores ignoti in domum mansionalem ipsius T. P. in H. pred' manu forti ingressi sunt & ipsum T. P. inde * disseverunt ac eandem domum manu forti & armata potentia adhuc extratenent, ac proinde petit a me sibi in hac parte remedium apponi qua quidem querimonia & petitione audita ego prefat' E. S. immediate ad dictam domum personaliter accessi ac in eadem domo adtunc inveni prefat' J. O. & J. S. domum illam manu forti & armata potentia, viz. baculis, gladiis, bombardis, &c. tenentes contra formam Statut' in hujusmodi casu edit' & probis' ac propterea ego prefat' E. S. predict' J. O. & J. S. adtunc & ibidem arrestari proximique Gaule dict' Dom' Reg' apud H. in dicto Com' duci feci ut de dictis manu forti & detentione per visum & recordum meum convict' ibidem moratur. quousque finem dict' Dom' Reg' pro transg' suis pred' fecerint Dat' apud H. pred' sub sigillo meo die & Anno supradictis.

* If it be a Freehold, otherwise it must be expul. ejecer. & amover.

A Precept to the Sheriff in the Nature of a *Venire Facias*, to summon a Jury.

Sussex, ff. **J.** P. Baronettus unus Justiciar' Dom' Reg. ad pacem in Com' p'ed' conserband' assign' Vice-^{Upon the} comiti ejusdem Com' salutem Ex parte Dom' ^{Stat. of 8.} H. 6.

Reg' tibi mando quod Venire Facias coram me apud V. in Com' p'ed' octavo die Januarii p'or' futur' viginti quatuor p'obos & legales homines de vicineto de V. p'edict' quorum quilibet habens 40 s. terrarum & tenementorum vel reddit' ad minus per Annum ultra rep'as ad inquirend' super Sacram' suum p'ro dict' Dom' Reg' de quodam ingressu manu forti facto in messuagium cujusdam J. O. apud V. p'ed' contra formam Statut' in hujusmodi casu edit' & p'obis. & videas quod super quemlibet juratozem per se in hac parte impanelland' viginti solidos de exitibus ad p'efat' diem retornez & hoc nullatenus omittas sub pena viginti librarum, & habeas ibi tunc hoc p'ceptum. Telle me p'efat' J. P. 10 die Januarii, Anno Regni, &c.

An Inquisition upon the Force.

Inquisitio capta p'ro Domino Reg' apud L. in Com' Sussex, octavo die Januarii, Anno Regni, &c. per sacram' C. L. R. R. H. S. W. N. &c. coram J. P. Baronet' un' Justiciar' dict' Dom' Reg' ad pacem in Com' p'ed' conserband' assign' nec non ad diversas Felonias, Transgressiones & alia Malefacta in eodem Com' perpetrata audiend' & terminand' qui dicunt super Sacram' suum quod J. O. de H. in Com' p'ed' Yeoman, legitime & pacifice seiscitus fuit in Dominico suo ut de feodo de & in uno messuagio cum pertin' in L. p'ed' possessionem suam pacificam p'ed' continuabit quousq' J. B. de, &c. & J. S. de, &c. & alii Malefactores ignoti tricesimo die Decembris ult' p'eterit' bi & armis, viz. baculis, gladiis & bombardis in messuagium p'ed' cum pertin' intraverunt ac ipsum J. O. inde * disseisiverunt & manu forti expulerunt & sic inde expulsum & disseisitum ab eodem messuagio p'ed' tricesimo die Decembris usque diem cap- tionis hujus Inquisitionis manu forti & armata potentia extratenuerunt & adhuc extratenuent in magnam perturbationem pacis dict' Dom' Reg' ac contra formam Statut' in hujusmodi casu edit' & p'obis. ubi nullus eorum nec aliquis alius cujus statum ipse vel ipsi habent aliquid in p'ed' messuagio cum pertin' vel aliqua inde parcella habuit vel habuerunt infra tres Annos p'proximos ante ingressum suum p'ed' nec aliquo alio tempore ad notitiam jurat' p'ed'.

* This Word is absolutely necessary upon the Stat. 8 H. 6.

The Entry and Expulsion being thus found by the Jury, the Justice may make a Precept to the Sheriff for Restitution, thus:

Suffex, ff. **J.** P. Baronet and Justice of the Peace for the said County, to the Sheriff thereof Greeting: Whereas by a certain Inquisition taken before me the eighth Day of January last past, at V. in the County aforesaid, upon the Oath of L. L. R. B. &c. according to the Form of the Statute in that Case made and provided, it was found that J. B. and J. S. and others, (prout in the Inquisition) as by the said Inquisition of Record doth more fully appear. These are therefore in his Majesty's Name to require you to go to the said Messuage and other the Premises, and cause the same with the Appurtenances to be resealed, and the aforesaid J. O. to be restored thereunto, and to his full Possession thereof, in as large and ample Manner as he was before the said Entry was made, And hereof fail not. Given under my Hand and Seal, &c.

A Mittimus of such who hold Lands, &c. by Force.

Suffex, ff. **T.** P. Esquire, a Justice of the Peace for the County aforesaid: To the Keeper of the Common Gaol at H. in the said County, or to his Deputy there. Whereas on this present 9th Day of January, in the Year 1703. Complaint hath been made unto me by W. R. of, &c. of a Forcible Entry made by several Persons into his Lands at, &c. I went immediately to the said Lands, where I found R. W. J. R. T. O. and S. P. of, &c. Labourers, forcibly and with strong Hands holding the Premises, against the Form of the Statute in that Case made and provided: Therefore I send you herewithal the Bodies of the said R. W. J. R. &c. being convicted of the said forcible Holding by my own View: Commanding you in his Majesty's Name to receive them into your Gaol and Custody, and there safely to keep them, until they shall be from thence delivered by due Course of Law. Given under my Hand and Seal the Day and Year first above-written.

If the Proceedings are at the Sessions by way of Indictment, then the Form is:

Suffex, ff. **J.** U R', &c. quod J. O. & J. S. de, &c. assumptis & associatis sibi ipsis aliis Malefactoribus & Variis Com' Regis perturbatoz modo hostili armatis quorum nomina Juratores p'ed penitus ignorant nono die Januarii, Anno, &c. apud H. in Com' p'd vi & armis, viz. baculis, gladiis, bombardis, lapidibus & aliis armis defensivis & inba-

fibis in unum * messuagium cum pertin' in H. p̄b † super p̄a- If it had
rificam possessionem cuiusdam R. N. intraverunt & quilibet been in u-
eorum intrabit, de quo quidem messuagio p̄b R. N. adtunc * num tene-
& adhuc possessionatus fuit p̄ termino septem Annozum adhuc mentam, it
ventur' & p̄b J. O. & J. S. & alii Malefactores p̄b vi & armis naught.
p̄b R. N. a possessione sua p̄b ejecerunt expulerunt & amo- 3 Roll. Rep.
berunt & p̄fat' R. N. sic inde expulsum a p̄b messuagio cum † if it had
pertin' illicite ac manu forti adtunc extratenuer' & † adhuc ex- been of a
tratenent contra pacem dia' Dom' Reg', &c. & contra formam Freehold,
Statut' in hujusmodi casu edit' & p̄b. it should
be adtunc

existen' liber' tenementum, R. N. 1 Mod. 371.

* The Word *adtunc* is necessary, because Restitution is to be awarded. 1 Vent. 22.
Yet if the Indictment began with the Day, Time and Place, all which follows shall be
taken to be the same Time. 1 Bulst. 177. Yelv. 28.

† The Omission of those Words had made the Indictment naught.

There are many Niceties in drawing this Indictment; and In the Case
first, as to the Entry into Lands, 'tis always necessary to say, of a Free-
adtunc existen' liberum tenementum; but to say, *adtunc & adhuc*, is hold.
repugnant, because it cannot be *adhuc* his Freehold, for he is Palm. 426.
disseised. 3 Bulst. 68. Noy 131. Latch. 109.
Cro. Eliz.

But it ought to conclude with *extratenuer' & adhuc extratenent*. 754.

Yet in my Lord Rolle, we have a Case of an Indictment that Het. 73.
was quash'd for not setting forth, that the Entry was upon such March 6.
a Place *adtunc existen' liberum tenementum*, and the later Authori- 1 Roll.
ties seem to agree with him. Rep. 65.

The Offender must be named of a Vill and County, because Sid. 132.
Process of Outlawry lieth against him for this Offence. Cro. Eliz.

Then the Place on which the Entry was made, must be cer- 32.
tain; and therefore if 'tis laid to be on a Rood of Land, it is 1 Bulst. 201.
void.

Yet for entering into a Close, and not saying how many Acres, Cro. Eliz.
was held good. 474.

It must always set forth the Estate of the Party grieved; and 1 Mod. 73.
therefore if 'tis for a Term of Years, 'tis not sufficient for the
Party to set forth, that *possessionatus fuit* generally, but he must
shew for how many Years; if it be for a Freehold, then he
must say *existens liberum tenementum*. 'Tis true, formerly it hath
been held, That those Words are implied by the Word *disseis-*
vit, because a Man cannot properly be *disseised* of any Thing
but a Freehold; but it hath since been adjudged otherwise.
2 Leon. 102. 4 Leon. 197. 1 Vent. 306, contra.

It must likewise be *inde disseisvit*, for if that Word is left out,
'tis naught. Noy 120.

But if the Word *illicite* is left out, that will not hurt it; be-
cause *disseisvit* implied it. Noy. 125.

By

By Tenant by *Elegit*.

Suffex, ff. **J**UR', &c. quod R. J. de H. in Com' pzed' Yeoman, coram Justiciariis Dom' Reg' nunc de Banco de Termino Sancti Hillarii, Anno Regni sui quinto per judicium ejusdem Curie recuperabit versus T. P. de L. in Com' pzed' Taylor, quoddam debitum & damna attingen' ad 50 l. & pzed' R. J. in Com' pzed' pro satisfactione ejusdem debiti & damnozumi faciend' elegit omnia bona & castalla pzed' T. P. (pze'ter Bobes & Affros de Caruca sua) necnon medietatem omnium terrarum & tenementozumi ejusdem T. P. juxta formam Statuti inde edit' & p'obis. sibi liberari cumque etiam R. F. Miles & Baronettus nuper Vicecomes Com' pzed' virtute Brevis Domini Regis pzed' de Elegit, ex parte R. J. pzed' eidem tunc Vicecomiti Com' pzed' direct' geren' dat' 23 die Januarii, Anno, &c. secundum exigentiam ejusdem Brevis deliberat' pzed' R. J. unum messuagium in L. pzed' annui valoris quinq; librarum exissen' medietatem omnium terrarum & tenementozumi de quibus pzed' T. P. tempore Judicii pzed' redditu aut unquam postea fuit seiscitus in Com' pzed' tenend' sibi & assign' suis ut liberum tenementum suum juxta formam Statuti in hujusmodi casu edit' & p'obis. donec idem R. J. pzed' 50 l. juxta valorem pzed' de messuagio pzed' levaverit virtute ejus pzed' R. J. in messuagium pzed' cum pertin' intrabit & fuit inde possessionat' ut tenens per Elegit, & possessionem suam inde quiete & pacifice continuabit, quousque J. O. de &c. & alii Malefactores ignoti 24 die Januarii, Anno, &c. vi & armis, viz. Baculis, &c. in Messuagium pzed' cum pertin' intraverunt, & quilibet eozum intrabit & ipsum R. J. manu forti & vi armata adtunc a possessione sua pzed' inde egerunt, expulerunt & amoverunt, & eundem R. J. sic expulsum, ejectum & adtunc amotum ab eodem messuagio cum pertin' a pzed' 24 Januarii, Anno supradicto usque hunc diem cum hujusmodi fortitudine & vi armata extratenuerunt contra pacem Dom' Reg' nunc, ac contra formam Statut' in hujusmodi casu edit' & p'obis.

By a Copyholder.

Suffex, ff. **J**UR', &c. quod T. P. de H. in Com' pzed' Gen' seiscitus fuit in Dominico suo ut de feodo ad voluntatem Domini secundum cons. manerii de
 * Latch.
 182.
 † Vent. 89. H. in Com' * pzed' de uno messuagio cum pertin' in H. pzed' ut tenens per † copiam Rotulorum Curie ejusdem manerii & sic

& sic inde * seifitus exiffen' seifinam & poffeffionem fuam pzed' * If it had
 pacifice & quiete dein continuabit quousq; J. S. de H. pzed' been seif-
 Blacksmith, 24 die Januarii, Anno, &c. in Belfuagium pzed' tus & pof-
 rum pertin' vi & armis, viz. Baculis, &c. intrabit & ipfum feffionatus
 T. P. de poffeffione & seifina fua pzed' inde manu forti & armis been
 ta potentia expulit & amobit & ipfum T. P. fic expulsum & a naught, be-
 motum ab eodem Belfuagio cum pertin' a pzedict' 24 die Ja- caufe in-
 nuarii, Anno fupradicto ufq; ad hunc diem cum hujusmodi certain.
 fortitudine & armata potentia extratenuit & adhuc extratenet 1 Vent. 109.
 contra pacem Dom' Reg' nunc & contra formam Statut. &c.

Forfeiture.

THIS is occasioned by the Transgression of some Penal Law, whereby the Offender lofeth his Lands and Goods.

But this Difference is to be observed, That where Lands are forfeited, it shall relate to the Time of the Offence committed; but in Case where Goods and Chattels are forfeited, there shall be no Relation, for the Goods of the Felon are his own till Conviction or Attainder; and the Sheriff or other Officer ought not to remove them, because the Property is not alter'd till Conviction; but usually they secure the Goods of the Felon as soon as he is apprehended; but this is exprefly againft the Statute of 1 R. 3. cap. 3. by which it is enacted, That none shall feize the Goods of any arrested for Suspicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, &c. to be recovered by the Party grieved, in an Action of Debt, &c.

If it is found by the Coroner's Inquest, that the Party *fugam fecit*, he forfeits his Goods, notwithstanding he should be afterwards acquitted of the Felony by the Petty Jury, and they should find that he did not fly for the same: So where a true Man is pursued as a Felon, and he flieth and waiveth his own Goods, those are forfeited as if they had been stolen; for *facietur facinus qui judicium fugit*.

Now the Reason of the Forfeiture in the first Case, is because the King hath a Prerogative to take the Advantage of that Record which is most for his Interest, and that is the Record of the Coroner. *Staundf. Pl. Coron' 183. B.*

If a Man is acquitted of the Felony, but the Jury find *quod fugam fecit*, he shall lose his Goods which he had at the Time of the Acquittal, and not at the Time of the Flight. *Goldf. 135.*

Forgery.

	<i>Lands.</i>	<i>Goods.</i>
In Treason.	{ Lands in Fee or in Tail, or for Life or Years, after Conviction or Attainder. }	{ All the Goods and Chattels of what Kind soever: }

	<i>Lands.</i>
In Petit-Treason.	{ In Fee, for a Year and a Day. In Tail, during Life of the Offender. }

	<i>Lands.</i>	<i>Goods.</i>
In Felony.	{ In Fee-simple, for a Year and a Day from the Time of the Felony committed, and the Profits during Life of the Offender. }	{ Goods and Chat- tels from the Time of the Attainder or Conviction. }

	<i>Goods only.</i>
In Man- slaughter and <i>Felo de de</i> , Pe- tit Larceny.	{ Offenders in these Cases forfeit Goods and Chattels. }

	<i>Goods only.</i>
In Chance- medly, and <i>se defenden- do</i> .	{ Offenders forfeit Goods and Chattels, but they may have Pardon of Course. }

Forgery.

5 Eliz. 14. **T**HIS is an Offence at the Common Law, and likewise punishable by a particular Statute.

If the Indictment is at Common Law, the Offender convicted must stand in the Pillory, be fined and imprisoned during the Pleasure of the Court. *Ray*. 81.

Mr. Dalton is of Opinion, That Justices of Peace cannot meddle with these Offenders, because they cannot take Notice of the first Conviction.

Besides, by the express Words of the Statute of 5 Eliz. Justices of Assize, and of Oyer and Terminer, are to hear and determine this Offence. 2 Cro. Eliz. 87, 607, 697.

Style 363. Since the making this Statute, few Indictments have been brought for Forgeries at Common Law; some there are, viz. one *Howell Gwynn*, cut off a dead Man's Hand, and put a Pen and Ink in it, and signed and sealed a Deed with the Hand, and

and made Oath that it was the Hand-writing of B. and that he sealed and delivered the Deed; he was convicted and fined 100*l.* and was to stand in the Pillory two Hours at the Hall-Gate.

So one *Farmer* was convicted for a Forgery; he demurs to the Indictment, and it was found against him, and had Judgment to stand in the Pillory, was fined 100*l.* and imprisoned during Pleasure.

But since the Statute, many Indictments have been brought to punish the Offender of this Nature, who for the first * Of- * That is, fence is to be set in the Pillory in some Market-Town, to have his for forging, Ears cut off there, and his Nostrils slit, and shall forfeit the Profits 1. False Deed's. of his Lands to the King during his Life, and shall be committed also 2. Writings sealed. for Life. 3. Court-

Rolls. 4. Will, to the Intent that the Freehold of the Lands, or the Right or Title thereof, may be troubled or charged.

Every Indictment brought upon the Statute must pursue some of the Words of it; as if a Man is indicted for forging a Will, by which a Lease for Years is conveyed; this is not within the Statute under the Word *Will*, because it doth not charge the Freehold, or disturb the Right thereof; and the Word *Will*, in the Statute, relates only to such Wills which convey a Freehold; but it comes under the Words *Writing sealed*, and therefore shall be punish'd by that Law.

Four Years after the Making of this Statute, one *Taveener* was indicted for forging a Customary of a Manor, in which he had inserted several false Customs, and had put the Hands and Seals of eleven Tenants to it; and it was proved he did it wittingly, subtilly and falsly; and this was held Forgery within the Statute. *Dyer* 322. B.

In the next Paragraph, there are other Offences mentioned.

Forging.	{	1. Lease for Years.	{	Of Lands not Copyhold,
		2. Annuity.		1 <i>Lut.</i> 190. Action on
		3. Obligation.		this Statute for double
		4. Bill.		Costs.
	{	5. Acquittance.		<i>Sid.</i> 278. fined 100 <i>l.</i> and
		6. Release, or other Discharge of a Personal Thing.		bound to Good Behaviour.

And there is some Variation in the Punishment of these Offences, viz. *Pillory*; but the Offender loses but one of his Ears, and is to suffer but a Year's Imprisonment without Bail.

The second Offence in all the Cases above-mentioned, is Felony; but this seldom or never happens.

3 Leon. 170. Now Forging a Deed, by which Goods and Chattels are conveyed, is within neither of these Paragraphs: First, because it doth not concern a Freehold; and it is neither a Bill, Bond, Acquittance or Discharge of a Personal Thing, and so not within the Words of the Statute.

1 Salk. 375. Information against the Defendant for falsely *Endorsing* 20 Exchequer Bills; the Defendant was found guilty, but the Judgment was set aside, because the Word *Endorse* is not sufficient, for that imports a Writing on the Back of the Thing without putting a Name to it, therefore it should have been that the Defendant put such a Person's Name on the Back of the Bills, *ubi revera* there was no such Person, or not order'd to put his Name. 'Tis true, the Information is *false indorsavit in Deceptionem Regis*, and it is so found by the Jury; but a Fact shall not be made criminal by an Adverb of Aggravation, it should have been, 'That the Defendant made a false Endorsement *continen*', &c. for tho' here is a Falstiy, yet nothing is charged which is criminal.

Moor 619. The Father bound his Son Apprentice, and gave Bond of 100 l. for his Good Behaviour; the Master razed out *Libris*, and put in *Marcis*; and this was held not within the Statute, because he did a Prejudice to none but himself; that is, by making the Bond void, or at least by putting in a lesser Sum for a greater; but if he had increased the Sum, it had been otherwise.

Noy 42. Forging an *Assignment* of a Lease is not within the Statute, because it doth not charge the Lands, but only *transfers* an Interest which was in Being before.

Moor 655. But making a Feoffment, tho' Livery and Seisin was not endorsed when the Deed was delivered, and afterwards selling the Land for a valuable Consideration to another, and the endorsing Livery on the first Deed; this was held Forgery both in the Feoffor and Feoffee, because it was to deceive an honest Purchaser.

Noy 18. The Testator appointed a Man to write his Will, and to insert such a Clause, which he omitted, this is not Forgery; so if he write a Will without any Direction, and bring it to the Testator, who is not of perfect Memory, and he signs it: But if the Divisor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Estate for Life, so that the Remainder vests immediately upon the Death of the Divisor; this is Forgery.

Indictment, for that the Defendant *fabricavit seu fabricari causavit* a Bill of Lading: This was held naught upon a Demurrer, because an Indictment ought to be certain and positive.

Indictment for forging *quoddam scriptum obligatorium*; it was objected that it could not be obligatory if forged; therefore it should be *quoddam scriptum*, purporting a Writing Obligatory; but this Objection was not allowed.

Sessions have no Authority to take an Indictment for Forgery, for the Justices have no Power, but what they have by Act of Parliament; and the general Words of their Commission, *De omnibus aliis Malefactis & Transgressionibus quibuscunque*, must be understood of such Crimes as they have Power over by the several Statutes, which created or enlarged their Jurisdiction. *Mich. 9 Anna, B. R.*

Indictment for Forging a Deed.

Sussex, ff. **J**UR', &c. quod R. H. nuper de H. &c. 12 die If the In-
 Maii, Anno Regni, &c. apud H. pzed' in Com' formation
 pzed' ex sua propria mente & falsa imaginatione & the
 cobina quoddam falsum factum, viz. quandam Indenturam per forged
 quam quidam R. B. barganizaret & venderet omnes terras suas Lease vary
 vocat', &c. cum pertin' in H. in Com' pzed' cuidam T. B. Lien Name of
 ter & falso fabricabit fecit & eandem Indenturam adtunc & ibi the Lands,
 dem publicabit & legi fecit & in evidentiam ostendit, ad mole- 'tis void;
 stand' & perturband' statum possession' & titulum & interesse but 'tis ma-
 pzed' R. B. in Terris & Tenementis pzed' per quod idem R. B. terial to al-
 de possession' titulo & interesse suis ad Terras & Tenementum ledge some
 pzed' cum pertin' pergrabat' & vexat' existit in dict' Dom' Reg' Parcel of
 contemptum & ipsius R. B. dampnum & gravamen ac contra Land,
 formam Statut' in hujusmodi casu edit' & probis. necnon con- which may
 tra Pacem dict' Dom' Reg' Cozon' & Dignitatem suas. certainly
 be proved;
 and as to
 that, you
 may say,
inter alia.
Hob. 272.

Indictment for Forging a Bond.

Sussex, ff. **J**UR', &c. quod (as before) quoddam falsum scrip-
 tum obligatorium per quod quidam W. B. de, &c,
 die & anno supradictis obligasset se (to the Defen-
 dant) in summa Centum Librarum solvend' eidem (the Defen-
 dant) ad certum tempus in eodem falso scripto obligatio-
 nat' scilicet subtiliter & falso fabricabit ac falsum scriptum ob-
 ligatorium pzed' sic subtiliter & scilicet fabricat' postea, scilicet
 decimo die Maii, Anno Regni, &c. apud H. pzed' in Com' pzed'
 quasi verum scriptum obligatorium ejusdem W. B. sciens scrip-
 tum pzed' falsum & fabricatum esse publicabit & in evidentiam
 ostendit, ea intentione ad habend' & recuperand' de eodem
 W. B. pzed' Centum libras ad grave dampnum ipsius W. B.
 ac contra formam Statut' in hujusmodi casu edit' & probis.
 necnon contra pacem dict' Dom' Reg' nunc Cozon' & Digni-
 tat' suas.

Forestallers, Regrators and Engrossers.

A Forestaller is called by my Lord Coke, *Pauperum Depressor* & *totius Communitatis* & *Patria publicus inimicus*, and therefore is punishable at Common Law.

5 & 6 Ed. 6.
cap. 14.

By the Statute of 5 & 6 Ed. 6. he is thus described, *viz.*

*Roll. Rep.
1 Part 422.

1. He who buys or contracts for any Merchandize, Viſual, or any other Thing whatsoever, * *in the Way*, before it shall be brought to Market, &c.
2. He who cauſeth the ſame to be bought.
3. He who diſſuades People from bringing ſuch Commodities to Market, &c.
4. He who perſuades them to advance the Price after brought thither: In either of theſe Caſes he is a Foreſtaller.

Regrator
whar.

13 Eliz.
cap. 25.
5 Eliz. c. 12.
5 Ed. 6.
cap. 14.

Ingroſſing
the ſame.

A Regrator is he who buys Butter, Calves, Candles, Capons, Cheeſe, Chickens, Conies, Fiſh, Grain, Geeſe, Hens, Lambs, Pidgeons, Pigs, Sheep, Swine, Tallow, or other dead or alive Viſuals brought to Market to be ſold, and ſelleth the ſame again in the ſame Market, or in any other within four Miles thereof.

He who gets into his Poſſeſſion by Buying or Contract, (unleſs by Grant of Land or Tithes) Corn on the Ground, or other dead Viſuals, to the Intent to *ſell them again*, except Buyers of Barley or Oats, to make Malt and Oatmeal.

But Viſuallers not foreſtalling, and Badgers and Drovers not abuſing their Licences, and Buyers of foreign Commodities not being Salt or Fiſh, are excepted.

An Engroſſer being thus defined by the Statute, *viz.* One who gets into Poſſeſſion, Corn, &c. to the Intent to ſell the ſame again; the Queſtion was, If a Man buy Meal and convert it into Starch, whether this was within the Statute, becauſe it doth not remain the *ſame*, but is altered by a Trade? And held not: But if he buys Corn, and converts it into Meal, and ſells it, this is punishable by the Statute; becauſe the converting it into Meal is not Alteration of the Corn, for it remains the ſame Corn ſtill.

My Lord Coke says, That he rarely met with this Word before this Statute, and agrees, That 'tis an Offence only by the Consequence; and therefore the Indictment ought to set forth, That the Things bought were sold again in the same Market, and thereby made dearer.

Fishmongers and Butchers are not within this Law, if they buy only Things Belonging to their respective Trades; but if they buy *ea intentione ad revendend. contra formam Statuti*, it is punishable. *Cro. Car. 1 Roll. Rep. 11.*

But the Indictment must be certain, and therefore it hath been held not good for engrossing *magnam quantitatem Straminis & Fœni*, or *diversos cumulos tritici*; for it should be alledged, how many Loads of Hay and Straw, and how many Bushels of Wheat, &c. *Car. 381. Roll. Rep. 134.*

But Apples, Plums and Hops are not.

2 Cro. 214.

There are other Tradesmen, as well as *Fishmongers* and *Butchers*, which are not within this Statute; as *Poulterers* buying any Thing concerning their Trade, and selling it by Retail at reasonable Prices; and Inholders and Viſtuallers buying Wine or any Thing for the Sustenance of Men, and selling it in their Houses.

And it is to be observed, that none of these Offences were punishable before this Statute; and now the Prosecution must be within two Years after the Offence; and by the express Words in the Act, Justices in Sessions have Power to determine the same.

Upon Conviction at the Quarter-Sessions, either by the Punishment Oath of two Witnesses, or Presentment by the Jury, the Offender loseth,

1. For the first Offence, the Goods so bought, and must be committed for two Months without Bail.

2. For the second Offence, double the Value of the Goods, &c. and must be committed for six Months.

3. For the third Offence, loseth all his Goods, must stand in the Pillory, and be committed during the Pleasure of the King; but the Prosecution must be within two Years after the Offence: One Moiety of the Forfeitures goes to the King, and Which see the other Moiety may be levied by a *Fieri Facias* or *Capias* by in Indictment. the Justices, to the Use of the Prosecutor.

Names of Billets.	Being round.		Half round.		Quarter cleft.		How to be cut and marked.
	In.	qr.	In.	qr.	In.	qr.	
A single	72	1	0	0	0	0	No Notch.
A Cast	10	2	12	1	12	0	One Notch.
A Trois	13	0	15	0	14	3	Three in the Middle.
2 Cast	15	0	17	1	17	0	Two Notches.
3 Cast	18	1	21	1	21	0	{ One at each End, and } { one in the Middle. }
4 Cast	21	1	24	2	24	0	Four Notches.
5 Cast	23	3	27	2	27	0	Five Notches.
6 Cast	26	0	30	0	29	2	Six Notches.
7 Cast	28	0	32	2	32	0	Seven Notches.
8 Cast	30	0	34	3	34	0	Eight Notches.
9 Cast	31	3	36	3	36	1	Nine Notches.
10 Cast	33	2	38	3	38	0	Ten Notches.
11 Cast	35	1	0	0	0	0	Eleven.
12 Cast	46	3	0	0	0	0	Twelve.
13 Cast	38	1	0	0	0	0	Thirteen.
14 Cast	38	3	0	0	0	0	Fourteen.
15 Cast	41	0	0	0	0	0	Fifteen.
16 Cast	42	2	0	0	0	0	Sixteen.
17 Cast	43	3	0	0	0	0	Seventeen.
18 Cast	45	0	0	0	0	0	Eighteen.
19 Cast	46	1	0	0	0	0	Nineteen.
20 Cast	47	2	0	0	0	0	Twenty.

Every Billet commonly called,

But this Act extends not to Owners or Proprietors of Trees, who make Billets for their own private Use only.

9 A. c. 15. Upon Information given to a Justice of Peace, Mayor, &c. that Billet is not thus marked, he may call before him six sufficient Men of the Place where the Billet is, and give them an Oath to enquire and present, whether all or any Part of the Billet is of good Affise; and if they present on their Oath that 'tis not, then the Justice, &c. may take it as forfeited, and deliver it to the Overseers of the Poor of the Parish, to be distributed according to their Discretions.

If an Action is brought against the Justice, &c. he may plead the General Issue, and give the Act and Special Matter in Evidence; and if he recover, shall have treble Costs.

By 10 A. c. 6. the Laws for Affise of Fuel are not to extend to Billets made of Beech-wood: And no Person to sell Billets of Beech-wood by Retail in London, Westminster, or Bills of Mortality, unless affized, cut or marked, according to the Usage of marking Beech-Billet, before the Act of 9 Anna, or by Weight of the said Billet, if the Buyers require it.

Fullers.

Fullers Earth.

AFTER the 24th Day of *June*, 1698, it shall not be exported; Penalty 1 s. for every Pound Weight, 9 & 10 *Will.*

Game.

BY the Statute of 33 H. 8. one Justice may commit those 33 H. 8. c. 9. who keep unlawful Gaming-Houses, till they find Sureties by Recognizance not to keep such Houses any more; they likewise forfeit 40 s. to be divided between the King and Protector.

He may also commit without Bail, any Person playing there, till he enter into a Recognizance not to play any more; and besides, he forfeits for every Offence 6 s. 8 d.

And in order to apprehend such Persons, the Statute giveth the Justice Authority to enter into any common Place where unlawful Games are suspected to be used.

Bear-baiting.	Cock-fighting.	Nine-pins.	What Games are unlawful.
Bull-baiting.	Coits.	Tennis.	
Bowling.	Dice.		
Cards.	Foot-Ball.		

And by the Statute of 39 *Eliz. cap. 4.* Fencing and Stage-Plays are unlawful Games, for the Offenders in that Kind are made Vagabonds.

Apprentices.	Husbandmen.	Servants of all	Persons prohibited by this Law.
Artificers.	Labourers.	Kinds.	
Fishermen.	Mariners.	Watermen.	

These Persons must not play at any of these Games except at *Christmas*; not then, but in their own Houses; and Servants in their Masters Houses, and by their Leave.

The Forfeiture is 20 s. for every Offence, to be divided as aforesaid.

But a Man of 100 l. *per Annum*, may license his Servant to play at Bowls or Tennis.

One Justice may commit for cheating at Play. *Cro. Car. 235.*

Every Pack of Cards shall pay 6 d. and every Pair of Dice 5 s. one of the Cards shall be stamped by the Commissioners for Stamps, and the Paper enclosing the Dice, on the * Forfeiture of 5 l. for every Pack and for every Dice.

9 A. c. 27.
* A Moiety
to the
King, the
other to the
Prosecutor.

Under

Under this Title it may not be improper to mention the Act
 † 5 Annæ. for preserving the † Game; by which it is enacted, * That all
 * 3 G. c. 11. the Laws for the Preservation of the Game shall be in Force:
 And moreover, That any

Alehouse-keeper,		Chapman,		Inn-keeper,
Carrier,		Higlar,		Viſtaller,

having in his Cuſtody, or who ſhall buy or ſell, or offer to ſell, after the firſt Day of May 1707,

Grouſe,		Heath-game,		Partridge,
Hare,		Moor,		Pheafant,

forfeits for each the Sum of 5 l. one Half to the Informer, the other to the Poor of the Pariſh where the Offence was committed; and this is to be levied by Vertue of a Warrant under the Hand and Seal of the Juſtice of Peace, before whom the Offender ſhall be convicted; and for want of Diſtreſs, the Offender muſt be committed to the Houſe of Correction for three Months for the firſt Offence, without Bail, and four Months for the ſecond Offence.

The Conviction is to be made before a Juſtice of Peace, either upon View, or upon Oath of one Witneſs; but it muſt be within three Months after the Offence done.

'Tis likewiſe enacted, That if any one who deſtroys the Game, and ſhall within three Months diſcover the Alehouſe-keeper, &c. who hath bought or ſold, or offered to buy or ſell, or had in his Poſſeſſion any of the ſaid Game, ſo as the Perſon may be convicted thereof, ſuch Diſcoverer ſhall be diſcharged of the Penalties, and be entitled to a Moiety of the Forfeiture.

3 G. c. 11. The like Conviction and like Punishment for any Perſon, not qualified, to keep Grey-hounds, Hays, Lurchers, Setting-Dogs, Tunnels, or any other Engine whatſoever to kill the Game. And no *Certiorari* is to be allowed, unleſs the Party convicted ſhall be bound to the Proſecutor in the Sum of 50 l. with ſuch Sureties as the Juſtice before whom he was convicted ſhall think fit; conditioned to pay the Proſecutor full Coſts to be aſcertained upon Oath within fourteen Days after the Conviction, or a *Proceſſendo* allowed.

But a Carrier is not accountable for any Game ſent up by a Perſon qualified to kill it.

'Tis further provided, That any Juſtice of Peace, or Lord of a Manor, (but within his Manor) may take away any Hare, or any other Game; or any Dog, Net, &c. from any Higlar, Carrier, or any other Perſon not qualified to kill or keep the ſame.

Game-
keeper.

And a Lord of a Manor may likewiſe (under his Hand and Seal) give Power to a Game-keeper, to kill Game within his Lord-

Lordship : But such Game-keeper must not sell any Game without the Consent of his Lord ; if he doth, then upon Complaint of the said Lord, and upon the Oath of one Witness before a Justice of Peace, he shall be sent to the House of Correction for three Months.

And because the Burning of Heath, Ling, and Brakes or Fern, in the Forest of *Sherwood*, in the County of *Nottingham*, doth destroy the Game ; therefore if any Person shall burn the said Heath to Ashes, in that Forest, or in any other waste Ground, Common, or Land, within that County, without Leave from the Owner of the Soil, shall forfeit to such Owner 10 s. And any Person buying such Fern-Ashes of any unlicensed Person, forfeits 10 s. for every Peck ; one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Informer.

The Conviction is to be before a Justice of the Peace, by the Oath of one Witness, and the Penalty is to be paid immediately ; and in Default thereof, the Party is to be committed to the House of Correction for one Month.

This Act by 9 A. c. 5. is made perpetual ; but with some 9 A. c. 25. Alterations and Additions, viz. That whereas by the Act *supra*, a Lord of the Manor might appoint several Game-keepers in the same Manor, this enacts, That he shall not appoint above one keeper. to kill Game in one Manor, and his Name to be entred with the Clerk of the Peace where the Manor lies : Which Entry is to be made, and may be viewed without Fee, and a Certificate of such Entry to be granted by the said Clerk for 1 s.

And if any Game-keeper, whose Name is not so entred (not otherwise qualified to kill) shall kill any Hare, &c. he shall for every Offence incur the Forfeitures, &c. as by the Act *supra* are inflicted on Higlars, Carriers, Inn-keepers, or Victuallers for buying or selling Game, to be recovered, &c. as the said Act directs ; and so also if he take, kill or destroy any Hare, &c. in the Night-time.

But because Deputations were given by Lords of Manors to Farmers, Tenants, and Occupiers of their Lands, to be Game-keepers in their Manors, with Power to destroy the Game ; therefore they are prohibited by the Act 3 Georgii to grant any such Deputations, but to Persons duly qualified, or to one who is 3 Georgii cap. 11. truly and properly a Servant to such Lord of a Manor, or one immediately appointed by him to kill the Game for the sole Use and Benefit of such Lord or Lady, &c.

And that they shall not qualify any Person whatsoever (not being qualified by Law) to take or kill the Game, or to keep or use any Greyhound, Setting-dog, Hay, Lurcher, Gun, Tunnel, or any other Engine to kill and destroy the Game.

Any Person not duly qualified by Law, or not being truly and properly a Servant to a Lord of a Manor, &c. or not immediately

* *Viz. 5 l.*
On Con-
viction be-
fore one
Justice by

diately employed by him to kill the Game for his Use; and who shall under such Pretence kill or take any Game, or keep any Greyhounds, Setting-dogs, Gun, &c. shall for every Offence incur the like Forfeitures *, as by 5 A. & 9 A. and to be recovered in like Manner, and within such Time, and to such Uses.

Justice by one Witness; the Prosecution must be within 3 Months.

The Defendant was convicted upon the Statute 5 *Anna*, for keeping a Greyhound, and killing four Hares, not being qualified; but it was by his own Confession, and not upon the Oath of one credible Witness, as that Statute directs. Now the Forfeiture of 5 *l.* relating to the Conviction, and if that is not according to the Statute, then nothing is forfeited, and the Justice of Peace having no Power in this Case, but what he derives from the Statute; therefore it ought to be pursued, especially where 'tis penal.

* See *Tit.*
Perjury.

But adjudged, that the * Confession of the Offender is within the Intention, though not within the Letter of the Act, and 'tis the strongest Evidence against the Person confessing; therefore where a Justice convicts upon a stronger Evidence than is required by the Statute, such Conviction must be good. *Hill. 9 Geo. B. R. The King v. Gage.*

Another was convicted for keeping Dogs, Nets, Ferrets, &c. to catch Conies, not being qualified; and by Vertue of a Warrant his Goods were distrained for the Forfeiture, and a Town-Clerk granted a Replevin to take them out of the Possession of the Constable; the Court would not set aside the Replevin, but made a Rule for the Town-Clerk to shew Cause why an Attachment should not go. *Mich. 9 Geo.*

9 A. C. 25.

And if any Hare, &c. be found in the Shop, House, or Possession of any not qualified in his own Right to kill Game, or entitled thereto under some Person so qualified, it shall be adjudged an Exposing to Sale within the said Act.

And if any by Hays, Tunnels, or other Nets, &c. drive or take any Wild-duck, Teal, Widgeon, or other Fowl, commonly reputed Water-fowl, in any of the Fens, Lakes, broad Waters, or other Places of Resort for Wild-fowl in the Moulting Sea, and be therefore convicted before one Justice by one Witness, he forfeits for every such Fowl 5 *s.* one half to the Informer, and the other to the Poor, to be levied by Distress and Sale, by Warrant of the Justice before whom convicted, rendring the Overplus above the Penalty and Charges of Distress; and for want of Distress, be committed to the House of Correction not exceeding one Month, nor less than 14 Days, to be whipt and kept to hard Labour: And the Justice is to cause such Hays, Nets, &c. to be seized and destroyed in his Presence. ✓

And

And Note, in several of the late Statutes for regulating the 12 A. S. 2
Forces, &c. is a Clause inserted, That if any Officer or Sol- c. 12. & 1.
dier shall without Leave of the Lord of the Manor, under 2. c. 4.
Hand and Seal first obtained, take, kill, or destroy any Hare, 1 G. cap. 3.
Coney, Pheasant, Partridge, Pigeon, or other sort of Fowl, 3 G. c. 2.
Poultry, or Fish, or the King's Game, and be thereof on
Complaint made, convicted by one Witness before one Justice
(who may hear and determine this Matter) every Officer for-
feits for every Offence 5 l. to be distributed among the Poor
where the Offence was ; and every Officer commanding in
Chief upon the Place, for every such Offence by any Soldier
under his Command, 20 s. to be paid, &c. as aforesaid : And
if on such Conviction and Demand thereof by the Constable
or Overseers, such Officer refuses or neglects, and shall not
within 2 Days pay the same, he forfeits his Commission, and
the same is thereby declared null and void.

But the Conviction of those who destroy'd the Game, being 8 Geo.
to be made before the Justices of Peace, the Offenders often
escaped the Punishment, and if they were convicted, the Pe-
nalty is so small, that when paid, it did not deter disorderly
People from committing the like Offences ; therefore by a late
Statute 'tis provided, That where any Person shall be liable to
a *pecuniary Punishment* for any Offence against any Law in Being
for the Preservation of the Game, any Person may either pro-
ceed before the Justices, or may sue for the same by an *Action of*
Debt, &c. in any Court of Record, and if he recovers he shall have
double Costs.

This Action must be brought before the End of the *next Term*
after the Offence committed, and if the Plaintiff chooses to pro-
ceed by Action of Debt, he shall not proceed for the same Of-
fence before the Justices ; but if he should, then the Person so
doubly prosecuted, may plead the former Prosecution depend-
ing, or the Conviction or Judgment thereon had.

Gaming.

Personal Security given for Money won or lent at Play 9 Annæ
shall be void, and if 'tis in Lands, &c. it shall enure to cap. 14.
the Person to whom the same shall come after the Death of the
Mortgagor, and all Conveyances made to prevent it from
coming to him, shall be fraudulent and void.

He who loses by Gaming at one Time 10 l. and pays it to
the Winner, may within 3 Months afterwards recover it of
him by Action of Debt, for so much Money received to his
Use ; and if the Loser shall not sue for it in that Time, any
other

other Person may, and shall recover treble the Value with Costs; one Moiety to the Plaintiff, the other to the Poor of the Parish.

Getting Money at play by Cheating or ill Practice, or at any Time winning more than 10 *l.* and being convicted upon an Indictment or Information, shall forfeit 5 Times the Value of the Sum, or Thing won, to be recovered by the Prosecutor in an Action of Debt, and shall be punished as if perjured.

Two or more Justices may cause to come before them any Person whom they have Reason to suspect, to have no visible Estate, Possession or Calling to maintain himself, but doth for the most Part support himself by Gaming; and if such Person cannot make it appear that the principal Part of his Expences is not maintained by Gaming, the Justices, &c. may require him to find Sureties for his Good Behaviour for 12 Months, and if he cannot, may send him to common Gaol till he can.

And if he do give Security for his Good Behaviour, and afterwards play for more than 20 *l.* at one Sitting, 'tis a Breach thereof, and a Forfeiture of his Recognizance.

1 Salk. 344. Two play'd at Back-Gammon, one of them stirred a Table Man; but did not move it from the Point, and a Question arising between them, Whether he was bound to play that Man, a Wager of 100 *l.* was laid, and referred to the Groom Porter to decide, and in an Action brought for the 100 *l.* the Question was, Whether this was within the Statute of Gaming; and adjudged that it was not, because it was a Wager not on the Chance, but on the Right of playing the Game.

The Court was moved for Leave to file an Information against the Defendant, upon an Affidavit of the Prosecutor, that he had lost 15 *l.* to the Defendant at one Sitting; but this was opposed, because the Prosecutor had indicted the Defendant for the same Offence, and the Bill was found; 'tis true the Indictment was quashed, and the Defendant was never try'd upon it; but the Court would not give Leave to file an Information, because the Jury might find another Bill for the same Offence. *Mich. 9 Geo. B. R.*

The Warrant of Commitment.

To the Constable of, &c. and to the Keeper, &c.

Surrey, ff. **W**Hereas we whose Names are hereunto subscribed, two of his Majesty's Justices, &c. having just Reason to suspect that W. W. of Lambeth in the said County hath no visible Estate, Profession or Calling, but doth for the most Part support himself

himself by Gaming. We did therefore on the Day of the Date hereof cause the said W. W. to be brought before us, and upon his Examination, and other due Proof, it appeareth unto us that the principal Part of his Expences is maintained by Gaming; and he being required by us at the same Time to find Securities for his Good Behaviour for 12 Months, refused so to do. These are therefore to require you to convey the said W. W. to the Common Gaol for the said County: Commanding you the Keeper thereof to receive him into your Custody, there to remain till he shall give such Security as aforesaid. Given under our Hands and Seals, &c.

A Warrant against one having a Hare in his Custody.

To the Constable and Headboroughs of the Hundred of H. and to the Keeper of the House of Correction, &c.

Suffex, ss. **W** Hereas T. P. of H. in the said County, Higlar, hath on the Day of the Date hereof been duly convicted before me R. B. Esq; one on his Majesty's Justices of the Peace for the said County, upon the Oath of R. K. of, &c. for that the said T. P. had on the third Day of August last in his Custody at H. aforesaid, one Hare, contrary to the Statute in that Case made and provided; by Reason whereof, he hath forfeited the Sum of 5 l. These are therefore to require you to levy the said Sum of 5 l. by Distress and Sale of the Goods of the said T. P. rendring to him the Overplus, if any such shall happen to be, the Charge of distraining being first deducted; and that you forthwith pay one Moiety thereof to the said R. K. who first informed me of the said Offence, and the other Moiety to the Poor of the Parish of H. aforesaid, where the same was committed; and for want of such Distress, that then you carry the said T. P. to the House of Correction at L. and deliver him to the Keeper thereof, together with this Precept; who is hereby commanded to receive him into his Custody, and to keep him in the House of Correction for the Space of three Months next ensuing the Date hereof, without Bail or Mainprise, this being his first Offence of this Nature. And hereof fail not, &c. Given, &c.

The like Warrant *mutatis mutandis*, for Buying, Selling, or offering to Sale, an Hare, Partridge, or Pheasant: Or for keeping or using any Greyhound, Setting-dog, Hay, Tunnel, &c. or other Engine, not being qualified by Law to keep it.

A Licence from a Lord of a Manor to a Game-keeper.

Suffex, ff. **I** R. B. Esq; Lord of the Manor of C. in the said County, do hereby give Licence, Power and Authority to R. K. who is truly and properly my Servant, to kill any Hare, Pheasant, Partridge, or any other Game, in or upon my said Manor of C. aforesaid, for my Use. Witness my Hand and Seal this third Day of August, in the Year 1709.

A Mittimus of a Game-keeper to the House of Correction, for disposing of the Game, &c.

Suffex, ff. **W** Hereas R. K. of, &c. being impower'd under the Hand and Seal of R. B. Esq; Lord of the Manor of C. in the said County, to kill Game in his said Manor for his Use, did on the third Day of August last kill one Hare in the said Manor, and did on the next Day sell the same to T. P. of, &c. without the Consent or Knowledge of the said R. B. And whereas the said R. K. hath on the Day of the Date hereof, and upon the Complaint of the said R. B. been duly convicted before me of the said Offence, by the Oath of J. B. of, &c. These are therefore to require you to convey the said R. K. to the House of Correction at L. and to deliver him to the Keeper thereof; who is hereby required to receive him into his Custody, and safely to keep him in the House of Correction for the Space of three Months next ensuing: And hereof fail not. Given under my Hand and Seal, &c.

A Warrant to levy 5 l. upon one for killing a Hare; not qualified, but under the Pretence of being a Game-keeper.

To the Constable, &c.

3 Georgii
cap. 11.

One Justice
and one
Witness,
Prosecuti-
on must be
within 3
Months.
* Or keep
a Grey-
hound or
Settling-
dog as the
Case is.

Suffex, ff. **W** Hereas T. K. of L. in the County aforesaid, Labourer, was on the Day of the Date hereof duly convicted before me R. B. Esq; one of his Majesty's Justices of the Peace for the said County, upon the Oath of R. R. of, &c. that he the said T. K. did on the 8th Day of this Instant of August, at L. aforesaid, and within the Manor of the said R. B. kill one * Hare, not being qualified by the Law so to do, and not being truly employed by him to take or kill any Game for his sole Use and Benefit; by Reason whereof he the said T. K. hath forfeited 5 l. pursuant to the Statutes in that Case made and provided. These are therefore to require you forthwith to levy the said Sum of 5 l. on the Goods and Chat-
tels

tels of the said T. K. by † Distress and Sale thereof; and that you † If no
pay one Moiety thereof to R. R. who first informed me of the said Distress,
Offence, and the other Moiety to the Overseers of the Poor of the Pa- then to the
rish of L. where the said Offence was committed, for the Use of the House of
Poor thereof. Given, &c. Correction
for three
Months.

An Indictment for playing at Bowls, and keeping
a Bowling-Alley.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pzed'
stabularius 4 die Febr. Anno, &c. & continue
post pzed' 4 diem Febr. Anno supradicto us-
que ad quintum diem Junii, in dicto anno apud L. in
Com' pzed' commun' spheristerium pro suo proprio lucro
adtunc & ibidem cum globis illicite ludere custodiebat & con-
servabat contra formam statut' in hujusmodi casu edit' &
probis' & quod T. P. nuper de H. pzed' in Com' pzed' &
quinque alie persone juratozibus ignote pzed' 4 die Febr.
Anno supradicto pzed' commune spheristerium frequentabant
& adtunc & ibidem cum globis illicite ludebant contra formam
statut' pzed' & contra pacem, &c.

Aliter for a Gaming-house.

Suffex, ff. **J**UR', &c. quod T. P. de H. in Com' &c. Tay-
lor, 4 die Febr. Anno, &c. ac diversis aliis die-
bus & vicibus ante diem hujus inquisitionis
commune hospitium apud H. in Com' pzed' manutenebat & ad-
tunc & ibidem diversas personas suspect' cum pictis Chartis
& aleis illicite ludere permittebat tam in die quam in nocte
post horas debitas & legitimas ad grabamen inhabitantium
ibidem & in malum exemplum aliozum dict' Dom' Reg' sub-
ditozum & contra formam Statut' in hujusmodi casu edit'
& probis' & contra pacem, &c.

Gzephound. See Dogs.

Garden. See Hedge-breaking.

Gaol and Gaoler. Vide Prisoner.

IF he permits a Felon to escape, 'tis Felony; but if he kill
an unruly Prisoner. 'tis not Felony; if by hard Usage,
'tis Murder.

Gaol and Gaoler.

If he refuse to receive a Felon, being sent to him by Warrant, &c. he is finable, and the Township must keep him till the Gaol-Delivery.

Justices in Sessions have Power to tax every Parish in the County, not exceeding 8 *d.* per Week, towards the Relief of the Prisoners in Gaol: This Tax is to be levied every *Sunday* by the Churchwardens, and by them to be paid quarterly to the Constables; but if in a Corporation, then to the chief Officer and the Constables; and such chief Officer is to pay the same every Quarter-Sessions to the Collector, who is to distribute it weekly to the Prisoners.

And any of those Officers, neglecting their Duty, forfeits 5 *l.* between King and Prisoners.

11 & 12
W. cap. 19.

The Majority of Justices in Sessions, upon Presentment of the Grand Jury of the Insufficiency or Inconveniency of the Gaol, may agree upon such a Sum, as upon Examination of able Workmen shall be thought necessary, for building, finishing, or repairing thereof.

This Sum, by Warrant under their Hands and Seals, may be levied upon the several Hundreds and Divisions by equal Portions.

The Warrant is to be directed by the Justices in Sessions to the High Constables, Petty Constables, Bailiffs or other Officers, as they shall think fit, for levying the same.

Persons refusing or neglecting to pay the Assessment four Days after Demand by the proper Officer who is to collect it, or conveying away their Goods or Estate, &c. one Justice present at that Sessions may make a Warrant to the Collector to levy the Sum assess'd by Distress and Sale, &c. and keep the same four Days before Sale, at the Charge of the Owner; and if he doth not pay the Money within the four Days, then the Goods must be appraised by two Inhabitants where they were taken, or by other sufficient Persons, and sold by the Collector, returning the Overplus, but deducting the Charge of taking and keeping the Distress.

Justices in Sessions are to appoint one or more Receivers, giving Security to be accountable for the Money received and disbursed, in Pursuance of such Order as he shall have under the Hands and Seals of the Justices.

Officers refusing to account for four Days after Demand, the Justices may commit them without Bail.

The Receipt of the Receiver shall be a Discharge to the other Officers, paying the Proportion of their Assessment.

Discharge of Justices under Hand and Seal, in Sessions, to the Receivers, shall be allowed as a sufficient Release in any Court of Law or Equity.

Justices may covenant with Persons for building, finishing or repairing, &c.

Murderers and Felons shall be imprisoned in the common Gaol, and not elsewhere.

The aforesaid A^d 11 & 12 *W.* was to continue for ten Years, ^{6 G. cap. 19. made perpetual,} and from thence to the End of the next Sessions of Parliament; and now by the A^d 10 *Anna* 'tis continued from the first of *May*, for seven Years, and from thence to the End of the next Session of Parliament. ^{for so much as relates to the Building and Repairing County Gaols.}

Justices in the County have no Power to meddle in Corporations, but Head-Officers only. 14 *Eliz. cap. 5.*

Prisoner in carrying to Gaol is to bear his own Charges, and the Charge of those who attend him; if he refuse, one Justice may send a Warrant to the Constable of the Place where the Prisoner hath any Goods, to sell as much as by the Appraisalment of the Neighbours may be sufficient to satisfy the Charge; and if he hath no Goods, then the Constable and Churchwardens, and two or three of the Parish; or if there are no such Officers, then four of the chief Men of the Parish where the Felon was taken, may make a Rate, which one Justice may allow, and then 'tis to be paid; and if any Person refuse to pay it, the Justice may send his Warrant to levy it by Distress, &c. and Sale after Appraisalment. 3 *Jac. cap. 12.*

Good Behaviour. Vide Behaviour.

Gunpowder.

NO Person shall keep more than six hundred Pounds of Gunpowder, at five Score to the Hundred, in *London* or *Westminster*, or the Suburbs, or within three Miles of *St. James's Palace*, or within two Miles of any Magazine. ^{5 G. c. 26.}

After 1 *August* 1719, two or more Justices living within the said Limits, may summon before them any Person suspected of keeping Gunpowder, and may examine them on Oath, and if they refuse to be examined, the Justices may commit them to the County Gaol, 'till they shall conform to be examined, and if upon such Examination or the Oath of two Witnesses, it shall appear, that such Person hath more than six hundred Weight of Gunpowder, the Justices shall cause him carefully to remove the same out of the Limits aforesaid, which if he refuse to do by the Space of 24 Hours after Notice of any Order made by the Justices for that Purpose, he shall forfeit 20*s.* for every hundred Pounds of Gunpowder with full Costs, to any Person who will sue for the same in the Courts at *Westminster*, within six Calendar Months after such Notice.

Two Justices after 1 *August* 1719, may issue out Warrants to search in the Day-time any Place used for Gunpowder, and to break open the Door of such Place, and the Person hin-

Gunpowder.

dring such Search forfeits five Pounds to any one who will sue for it, within six Calendar Months after the Offence committed ; and if more than six hundred Pounds shall be found in any such Place, the Justices shall cause the same to be carefully remov'd at the Charge of the Owner, to be levied by Distress and Sale of his Goods, by Warrant under the Hands and Seals of such Justices.

After 1 August 1719, &c. no Person shall carry through the Streets of *London* and *Westminster*, or the Suburbs, more than 20 hundred Pounds at one Time, and that it shall be in cover'd Carts or Carriages, and the Barrels shall be close jointed and hooped, and put into Leather Bags, and Gunpowder carried on Horses or by Men, shall be put into Cases of Leather or Canvas, and if carried in a large Quantity in any other Manner, it shall be forfeited and seized by any Person for his own Use, the Offender being lawfully convicted before two Justices.

This Act shall not extend to any of the King's Magazines, or to carrying Gunpowder to them.

The Defendant prosecuted for putting this Act in Execution, may plead the general Issue, and give this Act, and any Special Matter in Evidence, and if he recover shall have treble Costs.

The Action must be laid in the County where the Fact was done, and must be commenced within six Calendar Months after it was done.

Justices of Peace of *Essex*, *Kent* and *Surrey*, at their respective Sessions, may appoint some convenient Ground, not exceeding two Acres in one Place, and near the *Thames*, on which any Person may build a Ware-house to keep Gunpowder, first agreeing with the Owner, and if such Owner refuse to agree, or cannot by Reason of any Disability, then the Sessions may issue out a Warrant to the Sheriff, to impanel a Jury before them, at such Time and Place as shall be appointed in the Warrant, which Jury shall, upon their Oaths, enquire into the true Value of the Land, and their Verdict shall be kept, with the Records of the Sessions, and the Decree of the Sessions shall be final ; and they may send for any Witnesses, and examine them on Oath ; and the Sum of Money assessed, not exceeding thirty Years Purchase, shall be paid to the Owner of the Ground, and upon such Payment or his Refusal to accept it, then upon leaving it in Court, for the Benefit of the Owner of the Inheritance of the Ground, shall be vested in the Purchaser and his Heirs, and the Ware-house shall be built in such Manner, as shall be directed by the principal Officer of his Majesty's Ordnance.

All Leases, Covenants, and Articles made of Ware-houses within *London* and *Westminster*, and the Suburbs, for keeping Gunpowder shall be void, if the Lessees desire it, but no Rent due

due on or before 25th May 1719, on any Deed, for Breach of Covenant shall be discharged.

The Summons of a Person keeping Gunpowder.

Westminster, ff. **W** Hereas we have just Cause to suspect W. R. ^{s G. c. 26.} of the Parish of St. James's in the City of ^{Two Ju-} Westminister, to keep great Quantities of Gunpowder in his Ware-^{stices.} house in the said Parish, contrary to the Statute in that Case made and provided: These are therefore to require you the said W. R. to appear before us H. C. and T. W. Esqrs. two of his Majesty's Justices living within the said Limits, on Thursday next being the 15th Day of this Instant July, between the Hours of 3 and 4 in the Afternoon of the same Day, at the House of W. C. commonly known by the Name of the St. Alban's Tavern in the Parish aforesaid, that you may then and there be examined by us, concerning the Premisses: And hereof sail not at your Peril. Given under our Hands and Seals, &c.

The Mittimus, upon his Refusal to be examined.

To the Constable, &c. and to the Keeper of the Gate-house, &c.

Westminster, ff. **W** Hereas W. R. of, &c. being justly suspected ^{s G. c. 26.} to keep great Quantities of Gunpowder in his ^{Two Ju-} Warehouse, in the Parish aforesaid, and being duly summoned, did ^{stices.} appear before us at a Time and Place for that Purpose appointed, but did then and there refuse to be examined by us upon Oath concerning his keeping Gunpowder: These are therefore to require you to convey the said W. R. to the common Gaol, called the Gate-house, in the City of Westminster aforesaid; and to deliver him to the Keeper thereof, who is hereby commanded to receive the said W. R. into the said Gaol, and him there safely to keep, 'till he shall conform to be examin'd as the Law directs, and for your so doing this shall be your Warrant. Given, &c.

A Warrant to levy on the Owner, the Charge of removing his Gunpowder.

To the Constable, &c.

Westminster, ff. **W** Hereas we H. C. and T. W. Esqrs. two of ^{s G. c. 26.} his Majesty's Justices of the Peace for the ^{Two Ju-} City aforesaid, and both living within the Limits thereof, did on the ^{stices.} 15th Day of August last, issue out a Warrant to you to search in the Day-time, the House of W. R. of the Parish of St. James's in Westminster aforesaid, being a Place used for Gunpowder; and it ap-
A a 4 pearing

Guns.

pearing to us, that you found upon the said Search seven hundred Weight of Gunpowder and more in the said Place, we did order you carefully to remove the same out of the Limits aforesaid, which was accordingly done on the Day following, and the Charge of the Removal thereof amounts to forty Shillings, which the said W. R. refuseth to pay: These are therefore to require you to levy the said Sum of forty Shillings on the Goods and Chattels of the said W. R. by Distress, &c.

Guns.

33 H. 8 c. 6. **N**One under 100 *l.* per Annum of Inheritance, or Lease for Who may 99 Years of 150 *l.* per Ann. may keep Guns or Pistols; keep them, he who hath so much by the Year, may take a Gun from him who not. who hath not, and break it, or forfeits 40 *s.* He who keeps a Gun, not qualified, forfeits 10 *l.*

See Dogs, 22 & 23 So likewise none must travel with a Gun charged, who hath Car. 2 c. 25. not 100 *l.* per Ann. except in Time of War; or going to or from Muster, Forfeiture is 10 *l.*

Guns used by any one not having 40 *l.* per Annum, or 200 *l.* in Goods, to kill Deer or Conies, any Person having 100 *l.* per Ann. may take them away, and keep them for his own Use. 3 Fac. cap. 13.

Any Person may bring an Offender against the Statute of 33 H. before the next Justice, who upon Examination and Proof may commit him to Prison till he hath paid the 10 *l.* viz. One Moiety to the King, the other to him who takes the Offender.

Shooting,
wide Fowl
in Bail.

Shooting must not be near a Market-Town, but in Defence of his House or Person, or at a dead Mark, in Pain to forfeit 10 *l.* between King and Prosecutor.

Prosecution must be within six Months.

Excepted out of this Statute :

1. Shooting at Buts by Servants whose Masters are qualified.
2. Inhabitants of Market-Towns.
3. Those who dwell alone, or near the Sea Coast.
4. Gun-makers, or those who sell them,
5. Those who have Licences at Quarter-Sessions.

Shooting at Duck, Grouse, Heron, Heathcock, Mallard, Pheasant, Partridge, Pidgeon, Teal, Widgeon, and being convicted before two Justices by Oath of two Witnesses, or by Confession, must be committed for three Months without Bail, or pay 20 *s.* for every Pidgeon killed, &c. to the Churchwardens where the Offence was committed, or where the Offender was taken, to the Use of the Poor. 1 Fac. c. 27. 1 Fac. cap. 11.

The

The Form of a Conviction upon the Statute of 34 H.
8. before one Justice.

Suffex, ff. **M**emorand' quod hoc quarto die Februarii in- Prosecution
stantis, Anno, &c. quidam T. P. de H. in by a com-
Com' pzed' Labourer, venit coram me R. B. Armig' proximo monPerson
Justiciari' dict' Dom' Regis ad Pacem suam in Com' pzed' con- within six
terband' assign' & adtunc & ibidem super Sacram' suum dixit & Months, by
deposuit quod J. O. nuper de H. pzed' in Com' pzed' Yeoman, the King
primo die Januarii, Anno Regni dict' Dom' Reg' nunc 13 apud within a
H. pzed' in Com' pzed' habuit & custodivit quoddam tormentum Year.
(vocat' a Hand-Gun) & adtunc & ibidem in tormento pzed' cum The Offen-
pulvere bombardico & plumbeis pellet' (Anglice Hail-Shot) one der must
rat' illicite & injuste displodebat (Anglice did shoot) contra be brought
formam Statuti in hujusmodi casu edit' & probis. eodem J. O. Justice in-
adtunc non habente in jure suo proprio, aut in jure uxoris sue stanter, up-
ad usum ipsius J. O. nec aliqua alia persona sive aliquibus aliis on View of
personis habent' vel habentibus ad usum ipsius J. O. terr' tene- the Of-
ment' feoda annuitat' seu Offic' ad annum balozem cen- fence.
tum libzarum & quia pzed' J. O. existens attachiatus & conduct' sence.
(Anglice brought) coram me pzedat' proximo Justiciari' per
dictum T. P. pro offens. pzed' & onerat' cum dicta offens. in for-
ma pzed' eandem offensionem non potest deducere. Ideo confide-
raturum est per me pzedat' prox' Justiciari' quod idem J. O. foris-
faciat & solvat summam decem libzarum juxta formam Statuti
pzed' cujus quidem summe decem libzar' medietas solvetur ad
usum dict' Dom' Regis, & altera medietas inde solvetur pzedat'
T. P. existen' primo conbeiatoz' (Anglice Bringer) dict' J. O.
coram me pro offens. pzed' juxta formam Statuti pzed' Et
quod idem J. O. committatur ad Gaolam Com' pzed' ibidem
remansur' quousque solberet pzed' summam decem libzarum ad
usum pzed' juxta formam Statuti pzed'. Raym. 378. 1 Ven.
39, 419. Sid. 247. 1 Saund. 263.

An Indictment for keeping *diversa Tormenta* (Anglice Guns
carentia longitudine secundum formam Statuti, not good. Roll. Abr. 2
Part, 81.

I hath been a Question, Whether an Indictment will lie up-
on the Statute before Justices in Sessions, for Want of Juris-
diction; because tho' they have Power by the general Words
of their Commission to punish Offences against the Peace, yet
this is not such an Offence 'tis only a Defect in the Qualifica-
tion of the Person shooting. 4 Mod. 49, 50.

One Cole was brought before R. T. a Justice of Peace in Glou- W. Jones
cestershire upon a Warrant for shooting with Hail-Shot in an 170.
Hand-Gun, and upon Examination the Justice finding the Fact
to be true, committed him until he should pay the 10 l. One
Moiety to the King, the other to the Informer, and having
made

Hares. Harbest-time.

made a Record of this Conviction, it was certified into B. R. upon the Return of an *Habeas Corpus*; adjudg'd that if the Statute is pursued, no Court could discharge the Defendant without paying the Forfeiture.

1 Vent. 39.
Sid. 419.

The Defendant was convicted upon the Statute 32 H. 8. c. 6. for carrying a Gun, not being qualified, which being removed by *Certiorari*, it was quash'd, because the Conviction was, *Coram nobis L. D. & R. L. Justiciariis Domini Regis ad pacem conservand* leaving out the Word *Assignatis*.

Hares. Vide Hares in Bail.**Hare-pipes. Vide Dogs.**

Vid. Tit.
Game.

Offender convicted by his own Confession, or Oath of two Witnesses before two Justices, of killing a Hare, must pay to the Use of the Poor 20 s. where the Offence was committed, or where taken, or else must be committed without Bail for three Months; but after he has been in Prison a Month, he shall be discharged, if he will be bound with two Sureties before two Justices never to offend in that Kind any more.
1 *Fac. cap. 27.*

Selling a Hare, forfeits 10 s. to the Prosecutor and Poor. *idem.*

Tracing, killing or destroying them in Snow, forfeits 6 s. 8 d. for each Hare. This is inquirable in Sessions and Leets, and Forfeitures go to the King, if assessed in Sessions. 14 & 15 H. 8. *cap. 10.*

If a Constable, searching by Vertue of a Warrant, find a Hare in the House of a suspected Person not qualified, he must carry him before a Justice; and if he doth not give a good Account how he came by it, or bring the Party of whom he bought it, or some Person to depose such Sale, he shall stand convicted, and pay not under 5 s. nor exceeding 20 s. to the Informer and Poor. 3 *W.*

Harbest-time. Vide Apprentices.

Artificers, and Persons fit to labour, may in Harvest-time be compelled by one Justice or Constable, and upon Refusal, may be put into the Stocks two Days and one Night; and the Constable and other Head-Officer is to do it, under the Penalty of 40 s. 5 *Eliz. cap. 4.*

Hawking.

Hawking.

Hawking in eared Corn is prohibited by the Statute of 23 Eliz. cap. 10. except by the Owner's Consent; the Penalty is 40 s. to be recover'd by the Owner in any Court of Record; and one Justice may bind the Offender with good Sureties to answer it at next General Sessions.

A Hawk taken up must be deliver'd to the Sheriff, if taken by a mean Man; and if not challeng'd in four Months, the Sheriff having proclaimed the Hawk in the Towns of the County, may keep it.

Stealing of a Hawk, or concealing it after Proclamation made by the Sheriff, Felony: Clergy allowed, 37 Ed. 3. c. 19.

Hawkers and Pedlars.

By the Statute of 8 & 9 W. it is enacted, That every Hawker, Pedlar, or Petty Chapman, or other Trading Person, going from Town to Town, &c.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
If on Foot, he must pay	04	00	00
If with Horse, Afs or Mule	08	00	00

Continued
by 9 & 10
Will. to 24
Junii, 1701.
Continued
by 12 & 13
Will. to 24
Junii, 1706.

Such Hawker must take a Licence, &c. and if he travels without, or contrary to his Licence, he forfeits for every Offence, to the Informer and Poor of the Parish where discovered, 12 l.

Refusing to shew his Licence, being demanded by any Officer of the Peace, he forfeits to the Poor where the Demand shall be made, 5 l.

And for Non-payment of the same, must suffer as a Vagrant, and be sent to the House of Correction.

Travelling with forged Licences, forfeits to the King and Prosecutor, to be recovered in the Courts of Westminster, 50 l. and be subject to the Penalties for Forgery.

A Constable neglecting or refusing to assist in the Execution of this Act, being convicted on Oath before a Justice of the Peace, forfeits for every Offence to the Poor and Prosecutor, to be levied by Distress, &c. 2 l.

Any Person may seize and detain such Hawker till he produce a Licence, or if trading without a Licence, till Notice be given to a Parish-Officer, who is to carry him before a Justice of the Peace, who upon Confession of the Party, or Oath of one Witness, That the Offender had traded without a Licence produced, shall by Warrant levy 12 l.

And

Hawkers and Pedlars.

3 & 4 Annæ, cap. 4. And because some Abuses were afterwards committed by Persons letting out to Hire the Licences by them taken to trade as Hawk-ers; therefore another Law was made, That every Person trading as an Hawker, &c. shall produce his Licence on Demand, or otherwise he shall incur the same Forfeiture as if he had traded without a Licence; and if any Person lend a Licence to Hire, either the Lender or the Trader shall forfeit 40*l.* and the Lender shall forfeit the Licence; one Moiety of the 40*l.* to the King, the other to the Informer, to be recovered by Action of Debt, Bill, Plaint or Information, &c.

And in the same Act it is declared, That Traders in the Woollen and Linen Manufactures, sending their Goods to Markets and Fairs on Horses, and selling the same by Wholesale, neither they, nor those employed under them, shall be taken to be Hawk-ers.

The Officer must render the Overplus after Deduction for the Charge of Distraining, and out of the Sale of the Goods distrained, pay the Penalties and Forfeiture.

Persons excepted out of this Act:

Sellers of	{	Acts of Parliament.
		Almanacks licensed.
		Fairs, selling Goods therein.
		Fish.
		Fruit.
		Gazettes.
		Markets, selling Goods therein.
		Prayers, selling Forms thereof.
		Prints licensed.
{	Proclamations.	
	Viçtuals.	

Makers of	{	Any Goods or Wares in this Kingdom, and selling Goods of their own making.	}	their	{	Agents.
						Apprentices.
						Children.
						Servants.

Artificers.	{	Coopers,	}	Or,	{	Other Persons trading in
		Glasiers,				mending Kettles, Tubs,
		Harness-makers,				Houſhold-goods or Harness,
		Plummers,				going about, and carrying
		Tinkers,				with them proper Materials for mending the same.

4 G. c. 6. And by the Statute 4 G. cap. 6. it is enacted that no Person who is a Maker or Wholesale Trader in *English* Bone-Lace, and selling the same by Wholesale, shall be adjudged to be a Hawker, Pedlar, or Petty Chapman, within the Meaning of any of these Acts, but that they and their Children, Apprentices

rices and Servants may go from House to House, to any of their Customers, without being subject to any of the Penalties, &c.

A Warrant to levy 12 l. for Hawking without a Licence.

To the Constable, &c.

Suffex, ff. **W** Hereas Information hath been given unto me, one of his Majesty's Justices of the Peace for the said County, upon the Oath of A. B. of, &c. that C. D. of, &c. Labourer, did on the 4th of May Instant, trade and hawk without Licence in, &c. and carried about and exposed to Sale three Pieces of Silks, called, &c. he not being the Maker of such Silk, nor Apprentice, Agent, Child or Servant to the real Worker or Maker of such Silks, he so carried abroad and exposed to Sale as aforesaid, which the said C. D. hath confessed before me upon his Examination, contrary to a late Act of Parliament for licensing Hawkers, &c. for which said Offence, he the said C. D. hath forfeited the Sum of 12 l. the one Moiety thereof to the Informer, and the other Moiety to the Poor of the Parish of, &c. where the said Offence was committed: These are therefore to authorize and require you, or any of you, upon Sight hereof to demand of the said C. D. the said Sum of 12 l. and in Case he refuse to pay the same, that then you levy the said Sum by Distress and Sale of the Goods, Wares and Merchandizes of the said C. D. rendering to him the Overplus, (if any be, reasonable Charges for making the said Distress, being first deducted) to be employed to the Use above-mentioned; and in Case of his Inability for Payment thereof, that then you forthwith bring the said C. D. before me, or any other of his Majesty's Justices of the Peace of the County aforesaid, to be further dealt with as the Laws in that Case provided to direct: And hereof. &c. Given, &c.

Haps. See Dogs.

Hedge-breaking. See Wood.

Breakers and Cut- ters of Cutters and Carriers a- way of Pullers up of Cutters and Spoilers of	{ Fences, Hedges, Pales, Rails, { Corn growing. { Fruit-Trees, with Intent to carry away { Poles, Trees, Wood.	Any of these Offenders being convicted before one Justice ^{43 Eliz.c.7.} either upon Confession, or Oath of one Witness, must pay what Damage the Justice shall think fit; and if not able, may be whipped by the Constable, who neglecting may be committed without Bail till it be done. The second Offence is Whipping.
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In

Hedge-breakers.

In Conviction upon the Statute 43 *Eliz.* for cutting down Trees in the *Night-time*, the Number as well as the Nature of the Trees ought to be expressed; for in this Respect it is like an Action of Trespass where the Number and Nature of the Trees are to be the Measure of the Damages; and that if Trespass should be afterwards brought for the Trees, the Conviction might be pleaded in Bar.

1 G. c. 48. By a late Statute it is enacted, That he who shall *maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface or spoil* any Timber-trees, Fruit-trees, or other Tree or Trees, the Person damnified shall recover Damages and Costs against the * Parish or Place where the Injury was done, in such Manner as by the Act 13 *Ed. 1.* unless the Parish shall convict the Offenders within six Months after the Offence done.

* This is in Case the Offender cannot be found or known.

Upon Complaint of any Inhabitant of the Parish where such Offence was committed, to two Justices, or to the Sessions, they may cause the Offender to be apprehended, and may hear and finally determine the same; and if he shall be convicted, then he shall be forthwith sent to the House of Correction, there to be kept to hard Labour for three Months without Bail; and where there is no House of Correction, then to be sent to the Common Gaol, there to continue for four Months; and they shall order and adjudge the Offender to be whipp'd by the Master of the House of Correction, once in every Month of the said three Months in a Borough or Corporation, if the Offence is committed therein, and not otherwise; or in the *Market-Town* where the House of Correction stands, or in the next *Market-Town* to it, and in the County where such Offence shall be done, on the Market-Day of such Town, between the Hours of 11 and 2 a-Clock; and in Places where there is no House of Correction, the said Justices shall order him to be whipped by the Common Hangman once in every Month of the four Months, on the Market-Day of any Borough, Corporation or Town, between the said Hours.

The Offender not to be discharged till he hath found Sureties for his Good Behaviour for two Years.

If any Person maliciously set on Fire, or burn any Wood, Underwood or Coppice, or any Part thereof, it is *Felony*.

The Defendant was convicted by two Justices, upon the Statute 1 *Geo. cap. 48.* for destroying Fruit-trees; and it was moved to quash this Conviction, because it did not specify the Punishment inflicted by that Statute; which is, to be sent to the House of Correction for three Months, &c. and the better Opinion was, That this being a Special Judgment of the two Justices, they should have specified the Punishment inflicted by the Statute, because it might be different from the Punishment appointed by them; however, there being no Forfeiture in this Case it was held, That *Ideo consideratum est, qd' convictus*

dictus est was sufficient, without setting forth the Punishment.
Trin. 9 Geo. B. R.

The Warrant to apprehend the Offender.

To the Constable, &c.

Surrey, ff. **W** Hereas E. W. of, &c. hath complained unto us ^{1 G. c. 48.}
S. E. and J. H. Esqrs. two of his Majesty's Ju- ^{Two Ju-}
stices of the Peace for the said County, that R. W. of, &c. did lately ^{stices.}
commit a Trespass in the said Parish, by maliciously † breaking down
two Fruit-trees of the said J. O. These are therefore to require
you to apprehend the said R. W. and to bring him before us to answer
the Premises, &c.

† Or cut
up, or
throw
down, bark
or spoil any
Timber or Fruit-trees as the Case is.

The Conviction, or Mittimus.

To the Constable, &c. and to the Master of the House of
Correction at L. in, &c.

Sussex, ff. **W** Hereas upon the Complaint of J. O. of, &c. We ^{1 G. c. 48.}
whose Names are hereunto subscribed, two of his ^{Two Ju-}
Majesty's Justices of the Peace for the said County, did cause R. W. ^{stices.}
of, &c. to be apprehended for a Trespass, and being now brought before
us, We upon his Examination and other due Proof do adjudge, That
the said R. W. did on the 5th Day of August last past at L. in the
County aforesaid, maliciously * cut down two Fruit-trees of the said
J. O. contrary to the Statute in that Case made and provided, of which
Offence he now is and doth stand convicted: We therefore require
you forthwith to convey the aforesaid R. W. to the House of Correction
at L. in the said County, and to deliver him to the Master thereof:
And we hereby require you the said Master to receive the said
R. W. into your Custody, and him safely to keep in the House of Cor-
rection † for three Months next ensuing, and until he shall be legally
discharged from thence: And we do likewise hereby order that the
said R. W. shall be publicly whipp'd by you the said Master once in
every Month, during the said three Months, in the * Town of L. in
the said County, on a Market-day there, between the Hours of 11 and
2 a-Clock of the same Day; and for your so Doing, this shall be your
Warrant. Given under our Hands and Seals, &c.

* Or cut
up, pluck
up, bark or
spoil Tim-
ber-Trees,
Fruit-
Trees, or
any other
Tree, as
the Case is.
† Must
give Sure-
ties for his
Good Be-
haviour for
two Years.
* If the Of-
fence was

done in a Borough, or in a Corporation, then he must be whipped there.

6 G. c. 16. Any Person or Persons after the 24 June 1720,

Barking	} Any {	Coppices,
Breaking		Pales,
Burning		Quicksets,
Carrying away		Springs of Wood,
Cutting		Thorns,
Defacing		Tops of Trees,
Destroying		Underwoods,
Plucking up		Wood-Springs or
Spoiling		Woods.
Taking or Throwing down		

without the Consent of the Owner, or of the Person chiefly entrusted with the Care and Custody thereof; or

Breaking open	} Any {	Banks,
Destroying		Dikes,
Levelling or		Ditches,
Throwing down		Fences,
		Gates,
		Hedges,
		Posts,
		Rails,
		Stiles or
		Walls.

or other Enclosures of Woods, Wood-Grounds, Parks, Chases or Coppices, Plantations, Fruit-Trees, or other Trees, Thorns or Quicksets; he who is damnified shall have Recompence of the Inhabitants of the Village adjoining; as by the Act * 13 Ed. 1. unless the Offender shall be convicted by the Parish, within six Months after the Offence committed.

* This is where the Offender cannot be taken.

Any Person or Persons after the 24th of June, 1720, either in a riotous and open, or secret and clandestine Manner, forcibly, wrongfully and maliciously, without the Consent of the Proprietor, Wood-keeper, or Person chiefly entrusted with the Care of Woods, Wood-grounds, Parks, Chases, Coppices or Plantations; and who shall

Bark,	} Any {	Coppice Wood,
Break,		Underwood,
Burn,		Wood or
Carry away,		Wood Springs;
Cut down,		
Deface,		
Destroy,		
Spoil,		
Take or		
Throw down.		

Or

Or {	Break open, Destroy, Level or Throw down,	} Any {	Banks,
			Ditches.
			Fences,
			Gates,
			Hedges,
			Posts,
			Rails or
			Stiles.

or any Enclosures of such Woods, Underwoods, Coppices, Plantations, Timber Trees, Fruit-Trees, Thorns or Quicksets, then two Justices of the Peace of the County where such Offence was done, or the General Sessions, may upon Complaint to them made by any Inhabitant of the Parish, &c. or by the Owner of such Trees, or of any other, cause such Offender to be apprehended, and may then hear and finally determine the same; and if the Offender shall be convicted, then to inflict all and every the Penalties on him, as in the Act 1 *Georgii* is enacted.

Proviso, if any Person is sued at Law for what he hath done in Pursuance of these Acts, he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is Nonsuit, or a Verdict for the Defendant, he shall have treble Costs.

The former Act 1 *Georgii*, cap. 43. extended only to the malicious *Breaking down, Cutting up, Plucking up, Throwing down, Barkings, or otherwise Defacing or spoiling Trees*; but this Act 6 *Geo.* extends to the same in a more ample Manner; and likewise to the Preservation of all the *Enclosures* about the same; and the same Warrant to apprehend the Offender, and the same Conviction and *Mittimus* will serve as in the former Act, *mutatis mutandis*.

No Justice shall proceed for any of these Trespasses done to himself, without the Assistance of another Justice.

Constable, or any other Person, may take Persons who are suspected of having, &c.	{	Bark, Broom, Furze, Gates, Hedge-wood,		Pales, Poles, Posts, Rails, Stiles,		Trees growing, 15 Car. 2. Under-wood, cap. 2. Wood.

and by Warrant from one Justice, may search their Houses; and if they find any of these Things, may carry the Person before a Justice; and if such Person cannot satisfy the Justice how he came by them, &c. or doth not within a Time limited produce those of whom he bought them, or some Witness who will depose of whom bought, he shall be deemed as convicted upon the Statute of 43 *Eliz.* aforesaid, and be subject

Hedge-breakers.

to the Punishment therein contained; and besides, for the first Offence.

- (1.) He shall make such Recompence, and within such Time as the Justice shall appoint. And likewise,
- (2.) He shall pay to the Overseers of the Poor where the Offence was done, not exceeding 10 s.
- (3.) In Default thereof, he must be sent to the House of Correction for any Time not exceeding a Month.
- (4.) Or be whipped.

Second Offence, must be sent to the House of Correction for a Month, and be there kept to hard Labour.

Third Offence, shall be deemed incorrigible Rogues.

*W.2.c.49. Besides these Statutes, there is a very ancient * Law, by Cro. Car. which 'tis enacted, That if Hedges are destroyed *noctanter*, and 280, 439. it cannot be known by the Verdict of a Jury who were the Sid. 107. Malefactors, that the Towns near adjoining shall be distrained 312. to satisfy the Damages; and there have been Writs framed Style 215. upon this Law, and Prosecutions thereon. 1Leon. 108. Raym. 487, But cutting down Timber-Trees *noctanter* is not within this Statute, because the Words are against those who *fossatum & sepem prostraverunt*.

A Warrant against a Hedge-breaker.

To the Constable, &c.

Suffex, ss. **W** Hereas it hath been duly proved before me R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. hath within six Weeks last past broke the Hedge of, &c. (or as the Case is) contrary to the Laws in that Case made and provided: I do therefore hereby † appoint the said T. P. within five Days after Notice hereof, to pay unto the said J. S. 9 s. in Recompense and Satisfaction for the Wrong so done, as aforesaid; and if the said T. P. shall not pay the same, that then you inform me thereof, that such farther Proceedings may be had against him for the said Offence as the Law requireth. And hereof fail not. Given, &c.

† If the Justice doth not think him able, he may order him to be whipped. Like Punishment for an Accessary.

Upon Non-payment, to be whipp'd.

To the Constable, &c.

Suffex, ss. **W** Hereas it hath been duly proved before me R. B. Esq; being a Justice of the Peace for the County aforesaid, That, &c. (as in the former Warrant): And whereas the said T. P. hath not paid or discharged the said J. S. for the Damages done

Done to him, the Sum of 9 s. by me appointed for him to pay : Therefore I do hereby order, That the said T. P. be forthwith committed to the said Constable of, &c. to be whipped ; which you the said Constable are hereby required to do, or cause to be done, at your Peril. Given under my Hand, &c.

If any Justice find upon Examination upon Oath, that any one hath bought stolen Wood, he may order such a Buyer to pay the treble Value to him from whom it was taken ; and in Default of present Payment, may levy the same by Distress ; and in Default thereof, may be committed for a Month.

Hemp. See **Wool**, and working therein.
Hides and Skins. Vide **Leather**.

Highways.

PPrivate Ways are to be repaired by the Village ; and sometimes by a particular Person ; but publick Ways by the Parish, unless a particular Person was obliged by Custom or Prescription ; and Clergymen are liable to all Charges imposed by Act of Parliament, and in particular to repair Highways.
¹ *Vent.* 273.

The Statutes which relate to Highways in general are four, *viz.* 2 & 3 Ph. & M. cap. 8. 5 Eliz. cap. 13. 18 Eliz. cap. 10. 22 Car. 2. cap. 12.

But now by the late Statute of 3 & 4 W. & M. cap. 12. Those former Laws are altered in many Particulars ; upon which Statute these Things are to be considered, *viz.*

* On the 26th Day of December every Year, unless that happen on a Sunday ; and then they must be chosen the Day following, after this Manner.

* Surveyors when to be chosen.

Viz. The Parishioners being met, are to make a List of a competent Number of Names thus qualified :

1. They must have an Estate of 10 l. per Annum, either in their own Right, or in the Right of their Wives.
2. Or they must be worth 100 l. in Personal Estate.
3. Or Rent 30 l. per Annum.

If there are not any such Persons in the Parish, then a List must be made of the most sufficient Persons.

The List must be returned to two or more Justices of the Peace near the Division in which the Parish lieth, at a Special Sessions to be held on the third Day of January, or within fifteen Days afterwards.

Highways:

The Constables neglecting to return such List, do each of them forfeit 20 s.

Out of this List so returned, the Justices at that Sessions do appoint one or more to be Surveyors, &c. by an Order under their Hands and Seals.

The Person thus appointed must within six Days afterwards have Notice thereof given unto him by the Constable, leaving a Copy of the Justice's Order at the House of the Party, and then he must take upon him the Office.

But if he refuse being so nominated and appointed and served with the Order, then he forfeits 5 l. to be levied by Warrant from Justices of the same Division, or in Default thereof, from the Neighbouring Justices, upon Oath made, &c.

The Forfeiture being levied, one Moiety is to go to the Informer, and the other to repair the Highways; and the Justices may appoint one or more Surveyors again, who upon Notice, must take upon him or them the Office, &c. under the same Penalty.

His Duty when chosen. He must within fourteen Days after the Acceptance of his Office, and so from Time to Time every four Months, view the Roads and Bridges, &c.

* By the Stat. 1. G. He must present upon Oath * before some Justice, &c. such Ways which are not in Repair, or he forfeits 5 l. † unless two Justices shall allow his Excuse.

† By 1 G. c. 48. 'tis the Special Sessions. He must give publick Notice from Time to Time every four Months what Defaults he finds; this Notice must be given in the Parish-Church the next Sunday after Sermon ended; and if not amended within thirty Days afterwards by those who ought to repair, &c. then the Surveyor must within other thirty Days next following amend the same.

He must give an Account upon Oath at a Special Sessions, of all Money that comes to his Hands, and how disposed, &c. and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands; to be levied by Warrant of two Justices; one Part to the Informer, &c.

1 G. c. 48. If he neglects his Duty in any Thing, he is to forfeit 40 s. one Moiety to the Informer, the other to amend the Highways; and this Forfeiture may be levied by a Warrant from two Justices.

1 Georgii, cap. 48. Not giving an Account of the State and Condition of the Highways, but more especially of such Faults and Defects as want to be amended, and of those who are bound to find Labourers and Teams, forfeits 5 l. one Moiety to the Informer, the other to amend the Highways, unless the Justices in such Special Sessions allow a reasonable Excuse.

They must take the first reasonable Time to repair the Ways, and that it may be done before Harvest, if possible, and must repair

repair those Ways first, which the Justices in their *Special Sessions* shall order to be repaired, if any such Order there be.

He is to appoint six Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed; at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. Luke.

Every Man keeping a Horse-Team, must send out a Cart and two able Men; and if he keeps * Oxen, then he must send them out, and a Wain with two Men, every Day so appointed by the Surveyor; and if he keeps both, then he must send that which will do best Service, or forfeits 10 s. for every Day wherein he makes Default.

If all the Carriages in the Parish shall not be thought necessary by the Surveyors, then the Person whose Carriage is spared must send out two able Men, or forfeit 10 s. for every Man not sent.

Every Householder, Cottager and Labourer, must either work themselves, or hire one to work each of these six Days, or forfeits 12 d. per Day; and all of them must work eight Hours every Day.

If any Man hath a † Plow-Land or Pasture in several Parishes, he shall be chargeable only in the Parish where he lives; but if he keeps in his Occupation several Plow-Lands or Pastures, in several Parishes, he shall be chargeable in every Parish.

In such Place where Carts are not used, the Inhabitants must send Horses, according to the Custom of the Place, with able Persons, &c. under the like Penalty.

A Parson is not chargeable for his Glebe; but if he use other Land, 'tis otherwise.

The Surveyor may complain to the next Justice, &c. who, upon Oath made of the Default, may send his Warrant to levy the Forfeitures by Distress and Sale of Goods, viz,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
On a Labourer neglecting	0	1	6
For every Man and Horse, &c.	0	3	0
For every Cart with two Men	0	10	0

for every Day they shall neglect; which Penalties, when levied, must be employed towards the Amending of the Ways.

These must be cut down by the Owner of the Soil within ten Days after Notice given by the Surveyors, on Pain of 5 s. to be levied for every Neglect on the Goods of the Offender by Distress, &c. on Warrant of two Justices of the same Division, or in Default thereof by any Neighbouring Justices; but there must be Oath made by one Witness; one Moiety of the Forfeiture is to the Informer, the other towards the repairing of the Ways. 3 & 4 W. & M. cap. 12.

No Bushes, Trees or Shrubs, shall grow or stand, or Bough or Branch over-hang a Highway not twenty Foot broad. Offender forfeits 5 s. to be levied and employed as aforesaid.

How broad
Highways
must be.

A Surveyor may make every Cart-way leading to a Market-Town eight Foot broad at least, and as near as he can level; but the Statute appointing no particular Penalty against a Surveyor offending this Branch of the Statute, it may fall under the general Clause of neglecting his Duty in any Thing required by the said Act, and then the Penalty will be 40 s. For making the Way broad, is a Thing required by this Law, tho' there is no Provision how, or after what Manner, viz. By laying Part of the adjoining Lands to it where the Ways are narrow, which cannot be done without the Consent of the Owners. 3 & 4 W. & M. cap. 12.

Causeways for Horses must be three Foot broad.

These are Stones, Gravel, Sand, &c.

Materials
for amend-
ing the
Ways.

The Surveyors, &c. may take Stones and Rubbish already dug out of any Quarry, without Leave of the Owner, but cannot dig without Leave; yet they may gather Stones in any Land, without being Trespassers.

For Gravel they may dig in any Ground near the Highway, but not in an House, Garden, Orchard or Meadow; and it must be but in one Pit or Hole, not above twenty Foot in Length and Breadth; which Hole must be filled with Earth at the Charge of the Parish within a Month afterwards, under Penalty of five Marks, to be recovered by Action of Debt.

7 & 8 W.

Those who pull up, cut or remove any Post, Block, great Stone, Bank of Earth, or other Security of a Horse-way or Causeway from Waggon, Carts, &c. forfeit for every Offence 20 s.

The Conviction is to be by Oath of one Witness, before one Justice of the Division, or upon his own View; and 'tis to be levied by his Warrant by Distress and Sale, &c. one Moiety to the Surveyors to repair the Ways, the other to the Informer.

Of Rates
to reim-
burse Sur-
veyors.

When they have laid out their own Money to buy Materials, as Sand, Gravel, &c. in Parishes where they have none, they must attend the Justices at a Special Sessions, and make Oath what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar, and other Occupier of Lands, Tithes, Woods, &c. in the Parish; which Rate being allowed by the said Justices in their Special Sessions, may be levied on Persons refusing to pay, by Distress, &c. 3 & 4 W. & M.

Of Annoy-
ances in
the High-
ways by
Ditches,
&c.

By the Statute of 5 Eliz. those who have Lands adjoining to the Highway, in which Ditches ought to be, must scour them as often as there is Occasion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have a free Passage, upon Pain to forfeit 12 d. per Rod; but by the Statute of 3 & 4 W. & M. if they neglect 10 Days after No-

tice,

tice, the Forfeiture is 5 s. which is to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moiety to the Informer, the other to amend the Ways.

The Person who ought, and who neglects or delays, for thirty Days after Notice by the Surveyor, to scour and keep open his Ditches near the Highways; and Oath being thereof made before the Justices at their Special Sessions, he forfeits 2 s. 6 d. for every eight Yards of Ditching not scoured and kept open, to be levied by Warrant under the Hand and Seals of the Justices in such *Special Sessions* by Distress and Sale, &c. the Forfeitures to be accounted for by Surveyors for amending the Highways.

If in scouring the Ditches they lay the Soil in the Highway, and suffer it to lie there * six Months, they forfeit 12 d. per Load; but by the Statute of 3 & 4 W. & M. if not carried away within ten Days after Notice, 5 s. for every Offence, to be levied and employed as aforesaid.

The Surveyors have Power to turn any Spring or Water-course out of the Highways into those Ditches; and where the Ditches already made are not sufficient to carry away the Water; they have Power by 3 & 4 W. & M. to make new Ditches and Drains in and through the Lands adjoining, which they must keep *scoured*; and for that Purpose may with Workmen come upon the said Lands, without being Trespassers.

Persons laying any Thing in the Highway not twenty Foot broad, forfeit 5 s. to be levied and employed as aforesaid; and if Timber, Stone, Hay, Straw or Stubble, or other Matter for making Dung, or any other Pretence, shall be laid in any Highway, those who possess Lands next adjoining may remove and dispose thereof to their own Use.

Cannot lay Logs of Timber in the Highway, though there is a sufficient Room for Travellers left.

All Matters concerning the Highways, must be determined in the County where they lie, and not elsewhere; and none shall be punished, unless prosecuted within six Months after the Offence is committed. The Party grieved may appeal from any A&t done by the Justices to the Quarter-Sessions, whose Order shall conclude all Parties; and no Presentment, Indictment or Order, shall be removed by *Certiorari*. If any A&tion should be commenced against those who put that A&t in Execution, they may plead the General Issue, and give the A&t it self and the Special Matter in Evidence; and if the Plaintiff be nonsuited, discontinued, or a Verdict against him, the Defendant shall have double Costs.

The Justices of the Division are to hold a Special Sessions in the Division, &c. every Year on the Third of January, or within 15 Days after, of which they are to give Notice 10 Days before they hold the same to every Constable within the Division.

* By 1 G. c. 48. tis 8 Days after Notice; the Forfeiture is not exceeding 5 l. nor under 20 s. † 1 G. c. 48.

1 G. c. 48. The Power of the Justices, &c. and what they are enjoined to

They are to nominate under their Hands and Seals, out of the Lifts brought unto them; one or more Surveyors of every Parish within the Division, for the Year ensuing; and upon the Refusal of the Party so nominated, and paying the Forfeiture of 5*l.* for which they are to make a Warrant upon Oath of one credible Witness, then they are to nominate some other fit Person.

- 1 G. c. 48. Two of them may allow a reasonable Excuse of a Surveyor not viewing, or not presenting, every four Months, in what Condition the Ways are.

If Notice is given on *Sunday* after Sermon next after any Default found; if within thirty Days after such Notice the Party who ought to amend it, neglect so to do, and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuseth to pay the Charges, then upon Oath made of Notice, &c. as aforesaid, the Party shall be repaid such Charges as the Justice shall think fit, which is to be levied by his Warrant, &c.

They are once in four Months to hold a Special Sessions, and summon the Surveyors thereunto, and to tell them what they are obliged to do.

- 1 G. c. 48. At this Sessions the Justices may by Writing under their Hands and Seals, order the Reparation of those great Roads which do most want Repairing, in that Hundred where the Sessions is, which shall be first repaired, and in what Time and Manner,

They may likewise at this Sessions examine on Oath any Person who can give an Account of Money, which ought to be applied for mending the Highways, and levy the Penalties, and dispose the Forfeitures; one Moiety to the Surveyors of the Highways where the Offence was done, towards the Repairs thereof, and the other to the Informer.

3 & 4 W.
& M.

If any Fine or Forfeiture imposed on any Parish be levied upon any particular Inhabitant, then upon Complaint thereof to the Justices at the Special Sessions, they or two of them may, by their Warrant, cause a Rate to be made to repay that Person or Persons; which Rate the Surveyors shall levy and pay within a Month after the making thereof.

* 1 G. c.
48. Not-
withstand-
ing the six
Days Work
hath not
been per-
formed.

The Justices in their Quarter-Sessions not being satisfied that the Ways can be amended without the Help of the A& of 3 & 4 W. & M. may cause Assessments to be made on every Person usually rateable to the Poor, not exceeding 6*d.* in the Pound for the yearly Value of the Lands, nor of 6*d.* for every 20*l.* Personal Estate. * These Assessments must be made and levied by such Persons, and in such Manner as the Justices in their Sessions shall direct and appoint; and the Money must be employed according to their Order for repairing of the Highways; and if not paid within 10 Days after Demand, may be levied by Distress.

Any

Any Person grieved by such Assessment may appeal to the Quarter-Sessions, whose Order shall be final.

The next *Quarter-Sessions* may make such Order as they shall think fit, where any Person finds himself aggrieved, by any Thing done in Execution of the Statute, 1 *Georgii, cap. 48.* except for the Neglect of scouring Ditches, and carrying away the Earth taken out of the same, or who shall not carry away Stone, Timber, Straw or Dung left in the Highways, or not remove any other Annoyances by Water-courses, &c.

The Justices of *Middlesex* may at their Quarter-Sessions make Rates for paying *Kensington, &c.* 3 & 4 W. & M.

The Justices of every County, at *Easter Sessions* shall assess the Prices of all Land-Carriages of Goods to be brought into any Place within their Jurisdiction by any common Carrier, and shall certify such Rates to the Mayors or chief Officers of every Market-Town.

The Justice neglecting or refusing to do what is required by the Act forfeits 5*l.* one Moiety to the Prosecutor, to be recovered by Action of Debt in any of the King's Courts of Record, the other Moiety to be employed to amend the Highways where the Prosecutor liveth.

The *Quarter-Sessions* may appoint *Scavengers*, and order the Repairing and Cleansing the Streets in any City or Market-Town, and may appoint Persons to make *Assessments* on all Owners and Occupiers of Lands and Houses equally, not exceeding 6*d.* per Pound per Annum, to defray the Charges of such *Scavengers*; which Assessment being allowed under the Hands and Seals of the Justices, &c. may be collected by such Persons as they appoint, and be levied by their Warrant, on the Goods of those who shall not pay it within 8 Days after Demand; and the Money thus raised, shall be employed and accounted for according to the Direction of the Justices, for repairing and cleansing the Streets. 1 G. c. 48:

The Servants or Clerks of the Justices at their Special Sessions shall not take any Thing of a Surveyor for his Oath, or his Account given in to them, upon the Forfeiture of 10*l.* to be recovered in any Court of Record.

By 2 & 3 *Phil. & Mar.* and 5 *Eliz. cap. 13.* any Justice may, upon his own Knowledge, present at the General Sessions any Offence concerning Highways; upon which the Court may assess a Fine, tho' the Offender is absent; which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways, The Author's
city of the
Justices by
other Acts
2 Saund.
160.

The Form of which Conviction, is as followeth:

Sussex, ff. **M**emozand' quod R. B. de, &c. un' Justiciar' Dom' Regis ad Pacem in Com' pzed' conserband' necnon ad diversas felonias, & transgressiones, & alia malefacta in eodem Comitatu perpetrat' audiendum & terminand' assign' ad hanc Generalem Sessionem Pacis Com' pzed' tent' apud Lewes infra Com' pzed' 22 die Octobris, Anno Regni, &c. coram W. N. &c. Justiciariis Pacis in Com' pzed' dict' virtute Statut' Dom' Elizabethæ, nuper Regine Anglie, in Parlamento, tent' apud Westmon. 12 die Januarii, Anno Regni sui Quinto, & secundum formam & effectum dict' Statuti, intitulat' [An Act for the Reviving of a Statute made Anno 2 & 3 Phil. & Mar' for the Mending of Highways] super propriam notitiam suam presentabit, quod quedam Communis & antiqua Regia Via infra Parochiam de H. in Com' pzed' que ducit de Parochia pzed' ad Willam de L. in Com' pzed' (Per ratoria Villa existen') a quodam loco vocat', &c. in Parochia de H. pzed' usque quendam locum, &c. in Parochia de H. pzed' non est bene & sufficienter reparata & emendata secundum formam & effectum Statut' pzed' sed modo est in magno decalu, ita quod subditi dict' Dom' Regis per viam pzed' cum Equis, Plaustris, Carrucis, & Carriagis, & aliis necessariis suis, prout solebant, & debent, absque magno periculo transire seu laborare non possunt. In cujus rei Testimonium pzed' R. B. manum & sigillum suum apposuit.

The Order thereon is as followeth.

Super quo ad eandem Generalem Sessionem Pacis ibidem tent' die & Anno supradictis, pzed' Justiciarii Dom' Reg' ad pacem dicti Dom' Reg' in Com' pzed' conserband' assign' assessaverunt & imposuerunt finem 20 l. levand' de Inhabitantibus dict' Paroch' de H. in quorum defectu via pzed' non est sufficienter reparata secundum formam Statut' pzed' si pzed' Via non est sufficienter reparata & emendata ante festum Sancti Johannis Baptiste pzo' futur'.

'Tis to be observed, That upon such a Conviction the Decay of the Highway cannot be *traversed*; but the Defendant may plead, that some other Person ought to repair, and traverse that he ought not.

Any Officer receiving Estreats for levying Forfeitures, &c. and neglecting or not accounting and paying it between the first Day of *March* and the last Day of *April* to the Constables, &c. every Justice knowing any of these Defaults may present it,

Two Justices (*Quorum unus*) make take the Account of a High Constable, and may compel him to pay the Fines levied to the Petty Constable, or commit him; but he must be allowed 8 *d.* per Pound for gathering, and 12 *d.* for the Fee of the Estreat.

Any one Justice upon Complaint, may compel those who have been Constables to pay the Arrears of Money by them levied on Estreats.

Charities for repairing Ways are under the Government of Justices, &c. in their Sessions, if Trustees of such Charities are faulty in not letting the Lands at the improved Rents, or taking Fines.

One Justice of Peace, upon his own View, or upon Conviction by the Oath of one Witness, may commit him who resists any Person employed to put the Acts concerning Highways in Execution, or of rescuing Goods distrain'd, until he pay forty Shillings to the Surveyor, if he refuse to pay the same within seven Days after the Notice of such Conviction. 22 *Car. 2 cap. 12.*

By this Act, Carriages with Burdens are not to be drawn with above five Horses at length, but if they draw with more, it must be in Pairs. Offenders forfeit 40 *s.* for every Offence; one Third to the Surveyor, another Third to the Poor, another to the Informer.

But by a late Act, 'tis enacted, That a Travelling Waggon, Cart, or Carriage, whereon Burthen shall be drawn for Hire (except about Husbandry, Manuring of Lands, carrying Hay, Straw, Corn unthrash'd, Coal, Chalk, Timber, Materials for Building, Stones, or Artillery) shall go in any Highway, or be drawn with above the Number of Horses and Oxen following.

If with Horses, then not above eight, which must draw in Pairs, as hereafter mentioned.

If with Horses and Oxen it must be thus; <i>Viz.</i>	{	Eight Oxen and one Horse.
		Six Oxen and two Horses.
		Two Oxen and six Horses.
		Four Oxen and four Horses.

Which Horses and Oxen must draw in Pairs, with a Pole between the Wheel-Horses, or in double Shafts, and the other Horses to draw in a Line with the Wheel-Horses or Oxen, as they usually draw in Coaches.

The Owner of the Waggon, Cart, Horses or Oxen, forfeits for every Offence 40 *s.* whereof two Thirds go to repair the Highways, and the other Third to the Informer, to be * levied * by Distress of any one of the Horses or Oxen, by the Constable, Headborough, Surveyor of the Highways, by Warrant from Act, 22 *Car. 2. cap. 12.* as

from one Justice ; the Conviction must be by Oath of one Witness, or View of the Justice.

If the Penalty is not paid within three Days, the Officer may sell it, restoring the Overplus, the Charges of the Distraining, Selling and Keeping, being first deducted.

* 6 Annæ
c. 29. But this Part of that Act being found to be impracticable in some Places of this Kingdom ; therefore by another * Statute, the Drawing in Pairs with a Pole between the Wheel-Horses, or in double Shafts, &c. was repealed.

And by the said Act 'tis further provided, That after the 24th of June 1708, no travelling Waggon or Cart, wherein any Burden shall be carried (except as in the former Act is excepted) shall be drawn with more than six Horses, Oxen, or Beasts, upon Pain that the Owner of such Waggon shall forfeit for every such Offence 5 l. one Moiety to the Surveyor of the Highways of the Place where the Offence was committed, to be employed in the Repairs thereof ; the other Moiety to the Discoverer or Prosecutor, so as such Discoverer be an Inhabitant of such Place.

This Penalty is to be levied by Distress of the Horses or Oxen of the Owner of the Waggon, by Vertue of a Warrant under the Hand and Seal of one Justice of Peace ; and if not paid within 3 Days after the Distress taken, the Person distraining, may sell the same, rendring the Overplus, after Charges deducted.

Surveyor wilfully suffering a Waggon, &c. to be drawn with more than six Horses, and neglecting to put this or any former Acting in Execution, for repairing Highways, forfeits 5 l. to be divided and recovered as aforesaid.

Clause of drawing up-hill is repealed by the Statute 9 Anne cap. 18.

9 A. c. 18. By which Statute 'tis enacted, That any Person may distress or seize Horses, Oxen, or Beasts, drawing with more than six Horses, (against the Statute 6 A.) and deliver them to the Surveyor or other Parish Officer of the Place where the Offence shall be committed. And if the Penalty of 5 l. inflicted by that Act, is not paid in 3 Days, the Surveyor or other Parish-Officer may, by the Warrant of one Justice, sell the Distress, and deliver the Money to the Justice, who must * distribute it, as by that Act is directed.

* One Moiety to the Surveyor, the other to the Prosecutor.

The Person seizing, &c. but neglecting to bring the Cattle to the Surveyor or Parish-Officer forfeits 20 l. to be levied by Warrant of one Justice by Distress and Sale, &c. and for Want thereof to be sent to the Gaol till paid ; one Moiety to the Repairs of the Highways, the other to the Informer : The Surveyor neglecting to deliver the Sum by him received to the Justice, forfeits 20 l. to be levied as aforesaid.

Any Person employed by a Carrier, or another, and subject to the Penalties of that Act, and driving or assisting to drive any tra-

travelling Waggon or Cart with more than *six Horses*, &c. shall forfeit 5*l.* to be levied and disposed as aforesaid.

So much of that Act as relates to drawing up Hills with more than *six Horses*, &c. repealed.

And where *six Horses*, &c. are not sufficient to draw up-hill, or out of any foul Way, any Person may by Consent of the Owner or Driver, &c. add more Horses, &c. from any other Cart or Waggon on the Road.

This likewise was found impracticable (*viz.*) to draw a * 1 G. c. 10. Waggon with *six Horses*, and no more; and therefore by * another Statute the Drawing was to be as by the first Statute, 22 Car. 2. (*viz.*) not with above *five Horses*, &c. in Length, on the like Penalty as in the Act 6 & 7 Anna.

And that the Exception in this, or in any other Act shall not extend to the Excepting the Carriage of *thresh'd Corn*, or *Coal*, &c.

But now by the Statute 5 G. cap. 12. 'tis enacted that after 5 G. c. 12. 24 June 1719, no Waggon travelling for Hire shall be drawn with more than *six Horses*, either in Lengths, Pairs or Side-ways, nor a Cart with more than 3 *Horses*, the Waggoner shall forfeit all the Horses above Six, and the Carter all the Horses above Three, with all Geers, Bridles, Halsters and Accoutrements, to the sole Use and Benefit of any Person who shall seize the same.

The Persons seizing such Horses, must deliver him to the Constable or some Parish-Officer next the Place where the Seizure was made, who is to receive and take the same, till the Seisor shall upon Oath prove the Offence before a Justice, and then the Justice is to make a Precept to such Parish-Officer to deliver the Horses to the Seisor, paying such reasonable Charges for keeping the same, as the Justice shall allow.

If any Person shall, with Force, or otherwise, attempt to hinder the Seizing and Carrying away the Distress, or shall rescue the same, or use any Violence to the Seisor, he shall be committed by one Justice to the Common Gaol for three Months, there to remain without Bail, and shall also forfeit ten Pounds, to be levied by a Warrant of one Justice; and if not paid within three Days after the Distress taken, then the Person distraining may sell it, rendring the Overplus, the Charge of Distraining and Selling being deducted.

After 29 September 1719, no travelling Waggon for Hire, having the *Wheels* bound with Streaks of a less Breadth than two Inches and an Half, when worn, or being set on with rose-headed Nails, shall be drawn with more than three Horses under the Penalty of forfeiting all the Horses above three.

This Act doth not extend to Waggon or Carts employed about Husbandry or manuring Lands, and carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree or Piece of Timber, or any Stone or Block of Marble,

Highways.

ble, Carravans, and covered Carriages of Noblemen or Gentlemen, or Timber, Ammunition or Artillery for the Service of the King.

If an Action shall be brought against any Person for putting this Act in Execution, he shall plead the General Issue, and give the Act, or any Special Matter in Evidence; and if he recover, he shall have full Costs.

Note, This Act doth not repeal any of the former Acts, but 'tis to make them the more effectual, for repairing and amending the Highways.

After 25 March, 1720, no Person shall carry at any one Load in the Cities of London or Westminster, or within 10 Miles thereof, in Waggon or Carts, having Wheels bound with Iron, more than 12 Sacks of Meal, each Sack containing five Bushels, and no more; nor more than 12 Quarters of Malt; nor more than 700 and an Half of Bricks; nor more than one Chaldron of Coals, upon Pain of forfeiting any one of the Horses, together with the Geers, Bridles and Halters therewith used, to any Person who shall seize or distrain the same, in such Manner and to such Uses, as the Penalties and Forfeitures are directed to be levied and applied by an Act 5 G. cap. 12.

The Precept of the Justice to deliver the Horse seized, and drawing above six Horses to the Seisor.

To the Constable, &c.

Berks' ff. **W**Hereas on the Day of the Date hereof, it was duly proved before me, upon the Oath of W. R. of the Parish of, &c. that a Waggon travelling in the Road for Hire, on the second Day of July last past, in the Parish of, &c. aforesaid, and not employed in Husbandry, but loaded with Goods not excepted to be loaded by any Law whatsoever, was drawn with more than six Horses, contrary to the Statute in that Case made and provided; by Reason whereof, one Horse being above six in the said Waggon, drawing it in Manner as aforesaid, with all Geers, Bridles, Halters and Accoutrements, were then and there seized by the said W. R. as forfeited, and were delivered by him to the Constable of, &c. aforesaid, that being the next Parish where such Seizure was made: Now I do hereby command you the said Constable of, &c. forthwith to deliver the said Horse, and other the forfeited Things, unto the said W. R. who first seized the same, to and for his sole Use and Benefit, paying unto the said Constable 2 s. for keeping and securing the same for two Days. Given under my Hand, &c.

A War-

A Warrant to levy 10l. upon the Goods of the Person who obstructed the Seizure.

To the Constable, &c.

WHereas on the Day of the Date hereof, it was duly proved before me, upon the Oath of W. R. of H. &c. that W. W. of L. in the County aforesaid, did on the 5th Day of June last past, in the Parish of L. aforesaid, with Force, endeavour to * hinder the said W. R. in seizing and carrying away one Horse, being above six Horses then and there drawing a Waggon travelling on the Road for Hire, contrary to the Statute in that Case made and provided, by Reason whereof, the said Horse, with Geers, Bridles, Halters and Accoutrements were forfeited to the said W. R. who first endeavoured to seize the same; but was hindered by the said W. W. as aforesaid: These are therefore to require you forthwith to levy the Sum of ten Pounds upon the Goods and Chattels of the said W. W. by Distress and Sale thereof, in Case the said Sum of ten Pounds be not paid to you within three Days next after such Distress is taken, and that you render the Overplus to the Owner, the Charge of distraining and selling the said Goods, being first deducted. Given, &c.

* Or rescue it in using Violence to the Seisor, as the Case is.

Besides the Payment of these ten Pounds, he must likewise be committed for three Months.

The Form of the Mittimus.

To the Constable, &c. and to the Keeper of the Common Gaol, &c.

Berks' ff. **R**Ecite the Warrant before-mentioned, till you come to, § G. c. 12. These are therefore to require you to apprehend the said W. W. and to convey him to the Common Gaol at R. for the said County, and to deliver him to the Keeper thereof, who is hereby quired to receive the Body of the said W. W. and to keep him in the said Gaol without Bail for the Space of Three Months next ensuing. Given, &c.

A War-

*A Warrant to levy 5 l. on the Surveyor for misapplying,
&c. the Money by him received.*

To the Constable of, &c.

1 G. c. 48.
Prosecuti-
on must be
in six
Months af-
ter the Of-
fence.

W Hereas at a special Sessions holden at L. on the 5th Day of May last past, for the Amendment of the Highways in the said County, it appeared to us that the Sum of 50 l. was duly levied by C. D. Surveyor of the Highways in the Parish of L. on the Goods and Chattels of S. E. of the same Place, for leaving the Earth of a Ditch newly scoured in the Highway of the said Parish, by the Space of eight Days, after he had due Notice by the said C. D. to remove and carry away the same, Part of which Sum ought to have been applied by the said C. D. towards the Mending the said Highway. And whereas at the same Sessions it was duly proved before us S. E. and T. M. Esqs. two of his Majesty's Justices of the Peace for the said County, and before whom the said Sessions was held, by the Oath of R. R. of, &c. that 25 l. being one Moiety of the said Sum of 50 l. was misapplied by the said C. D. by Reason whereof he hath forfeited 5 l. pursuant to the Statute in that Case made and provided. These are therefore to require you forthwith to levy the said Sum of 5 l. on the Goods and Chattels of the said C. D. by Distress and Sale thereof, rendring to him the Overplus, and that you pay the same unto the aforesaid R. R. who gave us Information thereof. Given under our Hands and Seals, &c.

*A Warrant to levy the Penalty of 2 s. 6 d. per Yard,
for not scouring Ditches.*

To the Constable, &c. and to the Surveyors of the Highways,
of, &c.

1 G. c. 48.
Prosecuti-
on in six
Months, no
Appeal.
* Or to
scour or
mend a
Water-
course, or
remove an
Annoyance
as the Case
is.

W Hereas at a special Sessions holden at L. on the 6th Day of August last, for the Amendment of the Highways in the Hundred of, &c. in the said County, it was duly proved before us that R. R. of, &c. ought to scour and keep open a Ditch, in Length 100 Yards, near the Highways in L. aforesaid. And it was then likewise duly proved before us in the said Sessions, upon the Oath of C. D. Surveyor of the said Highways, in the Parish of L. aforesaid, that he gave the said R. R. due Notice to scour and keep open the said Ditch, but that he neglected to do the same, by the Space of 30 Days next after such Notice as aforesaid, by Reason whereof he hath forfeited 2 s. 6 d. for every 8 Yards of Ditching, of the said 100 Yards, not scoured and kept open as aforesaid, the Whole amounting to 1 l. 11 s. 3 d. We therefore require you forthwith to levy the said Sum of 1 l. 11 s. 3 d. on the Goods and Chattels of the said R. R. rendring

rendring to him the Overplus, and that you apply the said Sum to and for the Amendment of the Highways in the Parish of L. aforesaid. Given, &c.

A Warrant to levy the 5 l. for drawing with more than five Horses at Length.

To the Constable of, &c.

Surrey, ff. **W** Hereas it hath been duly proved before me, S. E. 1 G. c. 10. Esq; one of his Majesty's Justices of the Peace for the said County, that W. R. of L. in the County aforesaid, * Waggoner, did, on the 5th Day of August last past, travel in the Parish of * The like L. in the County aforesaid, with one Waggon, not employed in Husbandry, but loaded with Goods † not excepted to be loaded by any Law Warrant against any whatsoever, and drawn in the common Highway there with more than one for driving, or assisting to five Horses at Length, contrary to the Statute in that Case made drive, 9 A. and provided, by Reason whereof he hath forfeited * 5 l. These are c. 18. therefore to require you forthwith to levy the said Sum of 5 l. by Distress of all, or any of the said Horses; and if the said 5 l. is not paid † Corn and Coals are not excepted. 1 G. c. 10. within three Days after such Distress taken, that then you sell the said Horses for the Money you can get rendring to the said W. R. the 6 A. c. 18. Overplus after the Charges of distraining and keeping them shall be deducted, and that you pay one Moiety thereof to T. R. the Surveyor of the Highways in the said Parish of L. where the Offence was committed, to repair the same, and the other Moiety to T. K. of, &c. who first discovered and prosecuted the said W. R. for the said Offence. Given, &c.

A Warrant to sell the Horses which are seized by any Person whatsoever, to levy the 5 l. if not paid within three Days.

To the Constable of, &c. and to the Surveyor of the Highways in the Parish of, &c.

Surrey, ff. **W** Hereas T. L. of L. &c. did, on the 7th Day of 9 A. c. 18. August last past, seize two Horses drawing a 1 G. c. 10. Waggon with four more Horses in Length, in the Parish of L. aforesaid; which Waggon was not employed about Husbandry, but was then and there loaden with Goods not excepted to be loaded by any Law or Statute whatsoever, by Reason whereof the Owner of the said Waggon hath forfeited 5 l. pursuant to the Statute in that Case made and provided; and the Horses so seized, being forthwith delivered by the said T. L. unto B. R. of, &c. Surveyor of the Highways in the said Parish of, &c. the same were not redeemed, nor the 5 l. paid with-
C c

within three Days after the said Seizure, but is still unpaid: These
 † 9 A. c. 18. are therefore to require you, or one of you, to sell the Horses so seized
 A Moiety as aforesaid, for the best Price you can get for the same, rendring to
 to the Seizor, the O- the Owner the Overplus-Money, if any such shall be, after the 5 l.
 ther to re- and the Charges of distraining and keeping the said Horses, shall be de-
 pair the duffed, and that you deliver the said 5 l. to the next Justice, &c. to be
 Ways. † distributed as by Law is directed. Given, &c.

9 A. c. 18. A Warrant to levy 20 l. on the Person seizing the
 Horses, and neglecting to bring them to the Sur-
 veyor, &c.

* The like **W** Hereas R. L. &c. on the 7th Day of August last past, meet-
 ing with a Waggon travelling in the Highway in the Parish
 of L. aforesaid, not employed about Husbandry, but loaded with Goods
 Penal-y if the Person who levied the Money doth not bring it to a Justice. If no Distress, then be committed till the 5 l. paid.
 not excepted to be loaded by any Law, and drawn with more than five
 Horses in Length, did seize two of the said Horses, but did and doth
 neglect to deliver them to the Surveyor of the Highways, or some other
 Parish Officer of L. aforesaid, that being the Place where the Offence
 was committed, by Reason of which Neglect he hath forfeited 20 l.
 according to the Statute in that Case made and provided: These are
 therefore to require you forthwith to levy the said Sum of * 20 l. on
 the Goods and Chattels of the said R. L. by Distress and Sale there-
 of, rendring to him the Overplus; and that you pay one Moiety there-
 of to W. W. who first informed thereof, and the other Moiety to R. R.
 the Surveyor of the Highways in the Parish of L. where the said
 Seizure was made, to repair the Highways. Given, &c.

A Warrant against a Surveyor, or any other Parish
 Officer, to levy the 20 l. for neglecting to bring
 the 5 l. by him received, to the Justice, &c.

To the Constables, &c.

9 A. c. 18. Surrey, ss. **W** Hereas T. L. of L. &c. Surveyor of the High-
 1 G. c. 10. ways, having on the 7th Day of, &c. seized two
 Horses drawing a Waggon on the Highway, not employed about Hus-
 bandry, and loaded with Goods not excepted by any Law to be drawn
 with more than five Horses in Length, and by Sale of the said
 Horses so seized, did levy the Sum of 5 l. forfeited by the Owner of the
 said Waggon, but did and doth neglect to bring and deliver the said
 Sum of 5 l. so by him received, to a Justice of the Peace, pursuant to
 the Statute in that Case made and provided, by Reason whereof he
 hath forfeited 20 l. These are therefore to require you forthwith to
 levy the said Sum of 20 l. on the Goods and Chattels, &c. as in the
 former Warrant.

*A Warrant against a Surveyor, for not putting the
Laws in Execution.*

To the Constable, &c.

Suffex, ff. **W** Hereas it hath been duly proved before me, R. B. Esq; &c. That T. R. Surveyor of the Highways of the Parish of H. in the said County, did on the 25th Day of August last, wilfully suffer a Waggon loaded with Wares, and not employed in and about Husbandry, (ut prius) to be drawn in the common Highway, in the said Parish of H. with seven Horses, and hath hitherto neglected to put the Laws in Execution made for repairing the Highways; by Reason whereof he hath forfeited 5 l. These are therefore (ut prius).

Bedford, 5 *Anna*, 8 *Anna*, 9 *Anna*, 12 *Anna*, 3 *Geor.* 6 *Geo.* c. 25. Statutes
Berks, 12 *Anna*. which concern Highways and
Cambridge, 35 *H. 8.* cap. 15. 15 *Car.* 2. 4 & 5 *W. & M.* cap. 9. Bridges in
Cardiff, 23 *Eliz.* cap. 11. particular
Carleon, 23 *Eliz.* cap. 11. 39 *Eliz.* cap. 23. Places.
Chepstow, 3 *Fac.* 1. cap. 23.
Chester, 37 *H. 8.* cap. 3. 4 & 5 *Anna*.
Chichester, 18 *Eliz.* cap. 19.
Cumberland, 43 *Eliz.* cap. 16.
Dorset, 1 *Mar.* cap. 5.
Essex, 7 & 8 *W.* cap. 9. 1 *Anna*.
Gloucester, 9 & 10 *Will.*
Hereford, 39 *Eliz.* cap. 24.
Hertford, 15 *Car.* 2. cap. 1. 16 & 17 *Car.* 2. c. 10. 4 & 5 *W. & M.* cap. 9. 5 *Anna*, 6 *Geo.* cap. 25.
Huntingdon, 4 & 5 *W. & M.* cap. 9. 9 *Anna*, 12 *Anna*.
Ipswich, 13 *Eliz.* cap. 24.
Kent, 15 *H. 8.* cap. 5. 26 *H. 8.* cap. 7. 18 *Eliz.* cap. 10. 27 *Eliz.* cap. 26. 39 *Eliz.* cap. 19. 8 *Anna*. 11 *Anna*. 6 *Geo.* cap. 26.
London, 24 *H. 8.* cap. 11. 25 *H. 8.* c. 8. 32 *H. 8.* c. 17. 34 *H. 8.* cap. 12. 13 *Eliz.* cap. 23. 23 *Eliz.* cap. 12. 19 *Car.* 2. cap. 3. 22 & 23 *Car.* 2. cap. 17. 3 & 4 *W. & M.* cap. 12.
Middlesex, 10 *Anna*. 11 *Anna*. 12 *Anna*. 1 *Geo.* cap. 37. 3 *Geo.*
Newport, 23 *Eliz.* cap. 11. 39 *Eliz.* cap. 23.
Norfolk, 27 *Eliz.* cap. 24. 7 & 8 *W.* cap. 26. between Wymond-
ham and Attleborough, 7 *Anna*. 10 *Anna*.
Northampton, 8 *Anna*.
Oxford, 18 *Eliz.* cap. 20.
Rochester Bridge, 18 *Eliz.* cap. 17. 27 *Eliz.* cap. 15.
Somerset, 1 *Mar.* cap. 5.
Southampton, 9 *Anna*.
Stafford, 12 *Anna*.

Suffolk, 10 *Anna.*

Surrey, 39 *Eliz. cap. 19.* 6 *Geo. c. 26.*

Sussex, 15 *H. 8. cap. 6.* 29 *H. 8. cap. 7.* 39 *Eliz. c. 19.* 6 *G. c. 26.*

Wilts, 5 *Anna.* 12 *Anna.*

Worcester, 12 *Anna.*

Concerning Indictments about Highways.

For not repairing.

UPON Not Guilty pleaded, the Decay alone comes in Question; for if another Person ought to repair, it must be pleaded. *Pasch. 26 Car. 1. per Hale.*

Non reparare debet is a bad Issue; but yet if found for the Defendant, and not who ought to repair, he shall be acquitted, tho' no Judgment can be given upon such a Verdict. *Sid. 140.*

Style 400.

A Prescription to repair *ratione tenura*, is not good; because it ought to be by Custom, which is Local, *viz.* That in such a Place, there has been a Custom, Time out of Mind, &c. to repair. *Sid. 464.*

Latch 206.

One was indicted for not repairing, which he ought to do *ratione tenura*, omitting the Word *sua*; and it was objected, That another might have the Lands, and therefore it was unreasonable to indict the Defendant; and this seemed to be a colourable Objection, but the Forms are both Ways, and in the later Indictments that Word is usually left out.

1 Vent. 331.

Where a Person by any Enclosure straitens a Highway on both Sides, tho' the Parish repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Enclosure, and leaves the Way open as it was before, then the Parish is to repair it again. *Cro. Car. 366. Saund. 160.*

If Lands are exempted from repairing, &c. by a Grant of the King, made before the Statute 2 & 3 *Ph. & M.* yet that shall not be a good Discharge upon the Land. 3 *Mod. 96.*

A Highway is that which leads from one Market-Town to another, and is to be repaired of common Right by the Parish where the Decay is, unless some other Person is bound by Prescription or Custom; and therefore *reparare debet* generally, without shewing how, is not good.

Sid. 140.

But if the Defendant pleads *reparare non debet*, and 'tis so found, he shall be acquitted, tho' it doth not appear who should repair; and the Reason may be, because *de communi jure* the Parish is bound to repair their own Highways; and therefore they are never allowed to plead Not guilty, and give in Evidence, that another ought to repair by Prescription or Tenure; for if they would discharge themselves, they must plead it.

1 Vent. 156.

A common Way is that which leads from a Village or Town to the Parish Church, or Field; 'tis also called a private Way, and is to be repaired by the Village or Hamlet, and sometimes by a private Person: If such a Way be out of Repair, every Inhabitant may have an Action, but an Indictment will not lie.

But

But a Hamlet within a Parish cannot be charged generally to repair without Prescription, &c. *Style* 163.

All Nuisances must be set forth to be in a Highway; for if 'tis alledged to be in a Horse-way, the Indictment will be quash'd, and tho' a Nuisance may be alledged *in via Regia*, yet 'tis not good, if the Indictment doth not expresse where, or in what County. Cro. Eliz. 65.
1 Bull. 205.

An Indictment for not working towards the Repairs, &c. *Salk.* 357. setting forth, That six Days between such a Time were appointed by the Justices, and that the Defendant did not come on any of the said six Days; this is naught, for the Justices must assign particular Days, and not generally six Days between such Times.

It must conclude *ad commune nocumentum ligeorum*, &c. if it is For a Nuisance restrained by the Words *prope inhabitantium*, it will be quash'd. fance.
1 *Roll. Rep.* 406. 1 *Vent.* 26.

On an Indictment, the Defendant must produce a Certificate, that the Nuisance is removed, before he can take Exceptions to it; but a Presentment in such a Case must be quash'd, without a Certificate, &c.

For putting a Laystall next a Highway, not good, without shewing from and to what Place the Way leaderh. *Roll. Abr.* 2 Part 81.

Indictment for not repairing a ruinous House, standing on the Highway and likely to fall; and this was brought against a Tenant at Will, and alledged that he was bound to repair *ratione tenura*: Adjudged that it is an idle Allegation, for the Occupier is answerable to the Publick, who are to look to him, and not to what Estate he hath in the House.

The Inhabitants of C. being indicted for not repairing a Common Foot-way, submitted to a Fine, and paid it; but this did not end the Matter, for *Writs of Distringas* shall be awarded *in infinitum*, 'till 'tis repaired.

If it is a Highway, there is no Necessity of setting forth the *Terminus de quo & ad quem*, because such Way leads from the Sea through the whole Kingdom; but if 'tis only a Common Way, 'tis otherwise. For stop-
ping a
Way.
2 Saund. 71
157.
Litch. 185.

It was the Opinion of my Lord Hale, That every Inhabitant of the Parish may have an Action upon the Case, for stopping the Way to the Church,

For stopping *quandam partem aque*, it was quash'd; for it should have been *terram aqua coopertam*. A Man was indicted for stopping *communem viam pedestrem ad Ecclesiam de H.* and it was held, if the Way had been alledged to be *pro Parochianis*, it had made the Indictment ill, for then the Nuisance would extend no farther than the Parish, and every Parishioner might have an Action; but it was laid *ad commune nocumentum*, and in such Case, the Church shall be only intended the *Terminus ad quem*. 2 Cro. 524.
1 Vent. 238.

Poph. 206. 'Tis not always necessary to alledge, that the Defendant stopped *communem viam*, for it may be a Way leading to a Church.

The Defendant pleaded, That he laid out a more commodious Way, and that before it was done he brought a Writ of *ad quod damnum*, &c. Whether it would be a Damage if the King should give a Licence to stop up the old Way; and upon the Inquisition taken, it was found that it was no Damage: This was held no good Plea, because he did not plead that he had obtained the King's Licence; neither did he set forth by what Authority he laid out the Way; for 'tis but at his Pleasure, and he might stop it when he will. *Cro. Car.* 206.

If the Defendant before Verdict brings a Certificate that the Way is repaired, then he may submit to a Fine; but after a Verdict such Certificate will not do, because the Conviction being upon Record, must be answered by Matter of as high a Nature, and that must be by a *Constat* to the Sheriff, who may return that it is amended. *Raym.* 215.

For stopping *quandam partem Regie Vie apud H.* not good, without alledging how much in Breadth and Length. *Roll. Abr.* 2 Part 81. but you must not say, *Per estimationem*, for that is uncertain.

A Presentment in a Leet for diverting a Way, is void; because the Word (Divert) is not a Term proper and applicable to a Way, which may be obstructed, but cannot be diverted.

4 Leon. 121. For stopping a Way *valde necessariam* for the Subjects, quash'd, because it did not alledge it to be *Regiam Viam*.

Cro. Eliz. 148. So for alledging it to be *ad nocumentum diversorum*, &c. it should be of all the People.

1 Vent. 4. The Information was for stopping, and the Evidence was that he plowed it, and held good.

For not working on the Highways. In this Indictment, Notice was alledged, *die Dominica post Festum*, &c. and did not say, *proxima*, which ought to be by the Statute of 2 & 3 Phil. & Mar. and for that Reason it was quash'd. *Pasch.* 20 Car. 2.

If a Man hath eight Plough-Lands, though 'tis all Pasture, he ought to find eight Teams for six Days. *Raym.* 186.

2 Roll. Rep. 412. In this Case the Statute charges the Occupier: The Indictment was, That the Defendant *habens tantam terram*, did not work: And it was objected, that the Defendant might have Lands, and not use them himself; and this was held material.

A Warrant to levy the five Pounds for not taking upon him the Office of Surveyor.

Suffex, ff. **W** Hereas it appeareth unto us, &c. That J. O. of H. Two Ju-
in the said County, was on the fifteenth Day of stices.
 January last past, lawfully nominated and appointed to be Surveyor of
 the Highways, in and for the said Parish, for the Year next ensuing;
 and that within six Days after the said Nomination and Appointment,
 he had due Notice thereof: And whereas T. P. of H. aforesaid, hath
 now made Oath before us, That the said J. O. hath * refused to take * Or Neg-
 upon him the said Office, by Reason whereof he hath forfeited the Sum lected.
 of five Pounds, one Moiety thereof to the said T. P. who hath inform'd
 us of the said Offence, and the other Moiety to go towards the Repair-
 ing the Highways: These are therefore to command you that you
 forthwith levy the said Forfeiture of five Pounds by Distress and Sale
 of the Goods of the said J. O. rendring to him the Overplus, if any such
 shall happen to be, the necessary Charges of Distraining being first de-
 ducted: And hereof fail not. Given under our Hands and Seals
 the 20th of January, &c.

A Warrant against Constables, Tything-men, &c. for not returning Lists of Names to Justices.

To the High Constable of the Rape of L. in the County of S.

Suffex, ff. **W** Hereas the Constables, Headboroughs, Tythingmen, Two Ju-
Churchwardens and Surveyors of the Highways of stices,
 and in the Parish of H. in the County aforesaid, have neglected to make One Wit-
 a List of the Names of a competent Number of Inhabitants of the said nesses upon
 Parish, qualified by Law to take upon them the Office of Surveyor or Oath.
 Surveyors of the Highways in the said Parish for this present Year, or
 to return any such List to two or more Justices of the Peace at a Spe-
 cial Sessions by them held for that Purpose on, &c. according to the
 Form of the Statute in that Case made and provided, by Reason where-
 of every one of them so neglecting hath forfeited * Twenty Shillings, one * Moiety
 Moiety thereof to the Informer, the other to go towards the Repairing to the In-
 the said Highways: These are therefore to command you, that forth- former, the
 with you levy the several Sums of twenty Shillings upon, &c. (as be- other to a-
 fore.) mend the
 Ways.

A Warrant against a Surveyor neglecting to view the Ways, and not present to a Justice what Condition they are in.

To the Constable, &c.

Two Ju- Suffex, ff. **W** Hereas it appeareth unto us, H. P. and R. B. stices. Esquires, two of his Majesty's, &c. That J. O. * Or from of, &c. being lawfully nominated and appointed Surveyor of the High- Time to ways in the Parish of, &c. for this present Year, hath neglected with- Time eve- in * fourteen Days after his Acceptance of the said Office, to view the ry four in * Months, as Ways, Water-courses, Bridges and Causeways, which are to be repaired the Case is. by the Parish of H. aforesaid where he is Surveyor, and to present upon Oath to some Justice of the Peace in what Condition he found them, having for such his Neglect no reasonable Excuse allowed by two Ju- * Moicty to stices of the Peace; so that he hath forfeited the same Sum of * five the Inior- mer, the Pounds, according to the Statute in that Case made and provi- other to a- ded. These are therefore, &c. mend the Ways.

A Warrant to reimburse a Surveyor, by charging him who ought to repair, and who neglected after Notice, &c.

One Justice, Suffex, ff. **W** Hereas it hath been duly proved before R. B. Esq; one of his Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. ought to repair a certain Highway in, &c. as often as the same is in Decay: And whereas upon Oath made before me this present Day, by T. P. Surveyor of the Highways in and for the said Parish, that he having found a Default in the said Way, did the next Sunday afterwards, as soon as Sermon was ended, give publick Notice thereof in the Parish Church of, &c. and that the same was not amended within thirty Days after; whereupon the said T. P. did within thirty Days next following amend the said Default, and that the said J. O. who should have done the same, hath refused to pay the aforesaid T. P. the Charges thereof: These are therefore to will and require you forthwith, upon Sight hereof, to levy the Sum of * twenty Shillings by Distress and Sale of the Goods of the said J. O. and that you pay the same to the said T. P. which said Sum I think reasonable to be levied as aforesaid, in order to reimburse him the Charges laid out in amending the said Way: And hereof fail not. Given under my Hand and Seal, &c.

* 'Tis as the Justice shall think reasonable.

A War-

A Warrant against a Surveyor for not presenting the State of the Ways at the Special Sessions.

Suffex, ff. **W** Hereas a Special Sessions was held by the Justices Two Justices of the Peace for the County aforesaid at, &c. on ces. One Monday the 23d Day of March last past, to which Sessions J. O. Surveyor of the Highways in the Parish of, &c. was duly summoned: upon Oath. And whereas it hath been duly proved before us H. P. and R. B. Esquires, two Justices of the Peace, &c. that the said J. O. did neglect to appear at the said Sessions, and to present upon Oath the State of the Highways in the said Parish where he was Surveyor, or what Offences and Neglects any Persons were guilty of relating to the same, to repair by reason whereof he hath forfeited * forty Shillings: These are the Ways, therefore, &c. *One Moiety to the Informer, the other to repair

Against a Surveyor refusing to account.

To the Constable, &c.

Suffex, ff. **W** Hereas it hath been duly proved before us, H. P. Two Justices and R. B. Esqs; two of his Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. Surveyor of the Highways in and for the said Parish, hath neglected to give an Account upon Oath at any Special Sessions, of all Money which hath come to his Hands, and which ought to be employed in amending the Highways and how he hath disposed thereof, so that for such his Neglect he hath forfeited the Sum of 40 s. one Moiety to the Informer, and the other to repair the Highways in the said Parish. These are therefore, &c. ces. One Witness upon Oath.

Against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

To the Constable, &c.

Suffex ff. **W** Hereas T. P. of, &c. this Day made Oath before us, H. P. and R. B. Esqs; two of his Majesty's Justices of the Peace, &c. That J. O. now or late Surveyor of the Highways in and for the Parish of H. &c. hath refused to deliver to the next Surveyors of the Highways in the said Parish, what Monies remained in the Hands of the said J. O. which ought to be employed in amending the said Ways, which said Money doth amount unto 40 s. by Reason whereof he hath forfeited double the Value, one Moiety to the Informer, the other to amend the Highways in the said Parish. These are therefore, &c. ces. One Witness.

A War-

A Warrant against Persons neglecting to work on the Highways.

To the Surveyors of the Highways in the Parish of H.

Sussex, ss. **W** Hereas due Notice hath been given unto A. B. T. P. J. O. and J. S. all of the Parish of H. aforesaid, Labourers, to work on the Highways in the said Parish on certain Days lately appointed for that Purpose, in order to amend the same: And whereas it appeareth unto me by the Oath of, &c. that they, and each of them, have neglected or refused so to do: These are therefore to require you forthwith to levy the respective Sums hereafter mentioned upon the respective Goods and Chattels of the said several Persons, by Distress and Sale thereof; that is to say,

	l.	s.	d.
Upon the Goods of A. B. for neglecting two Days,	0	3	0
Upon the Goods of T. B. for neglecting three Days,	0	4	6

And that you employ the said Sums when levied, for and towards the Amending the Highways in the said Parish of H. And hereof fail not. Given under my Hand and Seal, &c.

A Warrant against a Person for laying Timber, Stones, &c. in the Highway.

To the Constable, &c.

Two Ju-
stices.
One Wit-
ness upon
Oath.

Sussex, ss. **W** Hereas R. V. hath this Day made Oath before us T. P. and R. K. Esquires, two of his Majesty's Justices, &c. That J. O. of, &c. did within six Months last past lay Timber and Logs in the Highway leading from, &c. in the Parish of, &c. the said Way not being twenty Foot broad, so that the same was much obstructed, by Reason whereof he hath forfeited five Shillings, one Moiety to the said R. V. who hath informed us of the said Offence, the other Moiety towards Amending the said Highways. These are therefore, &c.

The like Warrant against any Owner of Lands, who doth not cut down a Tree, Bush or Shrub in the Highway not twenty Foot broad, within ten Days after Notice given by the Surveyor.

In-

Indictment for not Repairing.

Sussex, ff. **JUR'**, &c. quod communis alta via Regia in Parochia de H. in Com' pzed' continen' in longitu-
dine duas virgat' & in latitudine unam virgatam * Et quod
vicesimo tertio die Martii, Anno Regni, &c. fuit & adhuc est in Inhabitan-
magno decalu pro defectu reparationis & emendationis ejus- tes ville de
dem. ita quod ligei dicti Domini Regis per & trans viam illam H. ex jure
transeuntes absque magno periculo non possunt transire, ad & ex anti-
grave dampnum & commune nocumentum omnium ligeorum qua con-
subditoz dicti Domini Regis per viam illam transeuntium, suetudine
viam pze-
* & quod R. B. de H. pzed' Gen' viam pzed' reparare debet quod dict' repa-
ties & quando necesse fuit ratione tenure terrarum & tenemen- rare de-
beant &c.
roz' suoz' ibidem prope adjacen', &c. soliti sunt.

For encroaching and enclosing the Highway.

Sussex, ff. **JUR'**, &c. quod T. P. de H. in Com' pzed' Yeo-
man, 12 die Januarii, Anno Regni, &c. bi & ar-
nis apud H. pzed' in Com' pzed' quandam partem
communis alte Regie vie ibidem ducen' a quodam loco ibidem
vocat', &c. in H. pzed' usque, &c. cum quibusdam sepibus &
fensuris illicite & injuste incrochiavit & inclusit & eandem par-
tem communis alte vie Regie pzed' sic ut pzetetur incrochiat'
& inclus. a pzed' 12 die Januarii, Anno ult' supradicto usq; 25
diem Martii, Anno, &c. apud H. pzed' in Com' pzed' illicite &
injuste continuabit, ac ratione inde communis alte Regie via
pzed' valde obstruct' debent ad grave dampnum & commune no-
cumentum omnium ligeoz' subditoz dicti Domini Regis nunc
in per & trans eandem communem altam Regiam viam euntium
transeuntium equitan' & labozan' & contra pacem dicti Domini
Regis nunc Cozon' & Dignitat' suas, &c.

Aliter.

Sussex, ff. **JUR'**, &c. quod cum a tempore ejus contrarii me-
moriam hominum non existit usitat' fuit quod ligei
Dom' Reg' habuerunt & legitime usi fuerunt qua-
dam via Regia communi apud H. in Com' Sussex pzed' in quo-
dam loco ibid' vocat', &c. ducen' a villa de H. pzed' usque ad
Burgum de L. in Com' pzed' pro seipsis & catallis suis absq;
ulla obstructione aut retardatione per aliquas fossat' sepes aut
alia obstacula quecumq; quidam tamen W. A. de H. pzed' in
Com' pzed' 23 die Martii, Anno Regni, &c. quandam fossat' &
sepem viam (Anglice, a Ditch and Quickset Hedge) apud H.
pzed' in pzed' loco super viam Regiam communem pzed' ad mag-
nam

* 'Tis not
necessary
to say *vi
& armis*
because he
may be the
Owner of the Land. *Poph.* 200. But it must conclude *contra Pacem*.
Godb. 59.

nam obstructionem & retardationem ligeorum dict' Dom' Regis
per viam illam transeun' effodit & erexit & fossat' & sepem
pred' sic ut prefertur effossa & erect' adhuc custod' contra Pacem
dict' Dom' Regis Coronam & dignitatem suas.

But it must conclude *contra Pacem*.
Godb. 59.

For erecting a Shed.

Sussex, ff. **J**UR', &c. quod W. H. de H. &c. 23 die Martii,
Anno Regni, &c. vi & armis, &c. apud H. pred'
in & super communem altam viam Regiam fecit
& erexit & fieri erigi & edificari causabit unum textum (Anglice,
a Shed) & eodem texto adtunc & ibidem quandam partem vie
pred' continen' in longitudine duodecim pedes, & latitudine octo
pedes inclusit incrochiavit & obstruxit & pred' partem vie pred'
sic ut prefertur per ipsum W. A. incluf. incrochiat' & obstruct-
am idem W. A. a pred' 23 Martii, Anno supradicto usq; diem
captionis huius inquisition' scilicet primum diem Maii tunc
pro' sequen' vi & armis apud Paroch' pred' in Com' p'eo' con-
tinuabit & adhuc continuat ad grave dampnum & commune no-
cumentum omnium ligeor' subditoz' dict' Dom' Regis per
communem altam viam Regiam pred' transeuntium & contra
Pacem, &c.

Indictment for a Nuisance in the Highway.

Sussex, ff. **J**UR', &c. quod R. O. de H. in Com' pred' Butcher,
7 die Augusti Anno Regni, &c. & diversis aliis
diebus & vicibus tam antea quam postea apud H.
pred' in Com' pred' in quodam loco ibidem prope publicum vi-
rum vocat', &c. necnon prope separales domos mansionales
diversor' ligeor' Dom' Reg' subditozum ibidem inhabitantium
magnam quantitatem fimi intestinoz' & al' sordium posuit & lo-
cabit ratione cusus & per insalubres odores & fetores abinde
proceden' aer ibidem per totum tempus pred' corrupt' & infect'
existit ad commune nocumentum omnium ligeor' subditoz' dict'
Domini Reg' in & per vicum & viam pred' transeun' in malum
exemplum omnium alioz' in huiusmodi casu delinquen' ac con-
tra Pacem, &c.

For laying Rubbish in the Highway.

Midd' ff. **J**UR', &c. quod, &c. in quadam alta via Regia
ibid' quinque carucat' fimi & luti (Angl' Rubbish)
adtunc & ibid' illicite & injuriose posuit & locabit,
& locari causabit & ibid' a pred' 7 Augusti usque 7 diem Septem-
bris pro' sequen' voluntarie remanere permittit ratione inde
via

bia Regia pzed' per totum tempus pzed' coarctat' & obstruct' fuit ita quod ligei subditi dicti Dom' Reg' in per & trans altam & communem viam Regiam pzed' ibid' circa negotia sua adeo libere ire transire & redire non potuerunt sicut consuever' & debuer' ad commune nocumentum omnium subditoꝝ dicti Domini Regis per & trans pzed' communem aliam viam Regiam ibidem transeunt' in malum exemplum omnium alioꝝ in hujusmodi casu delinquen' & contra Pacem, &c.

Holidays.

BY the Statute of 3 & 6 Ed. 6. cap. 3. several Days are appointed to be kept holy; and among the Rest, the Feast of St. John Baptist is one. A Man was presented in the Spiritual Court for carrying Hay on that Day, but had a Prohibition, because it was a Work of Necessity, being in Hay-time; and there is a *Proviso* in the Act, to except Persons working in Harvest, or upon Necessity.

Homicide.

Manslaughter or Homicide, is the Killing of a Man upon a sudden Provocation without any Malice, and in the Heat of Blood.

By this Definition it appeareth, That in Manslaughter,

1. There must be no deliberate Act, but the Falling out must be sudden.

2. The Act must be unlawful; for if lawful, then 'tis Chance-medley; and it must be without an Intention of any personal Wrong; for if the Intent is ill, 'tis Murder.

A sudden Falling out is, *viz.* If two Men fight, and one of them break his Sword, and a Stranger lends him another, with which he kills his Adversary; 'tis Manslaughter in both. What is a sudden Falling out.

To fight, and part presently, meet, and one is killed; this is a continual Affray, and therefore Manslaughter.

Malice between two; the Deceased challenges the other, who refused to meet, but said he should go to such a Place; the Deceased meets him, and was killed; Manslaughter. *H. P. C.* 48.

Entering a House with Force; those who are turned out of Possession come to set it on Fire, and one within shoots, and kills another without Doors; 'tis Manslaughter, because the Entry was unlawful. *H. P. C.* 56.

A Servant draws his Sword in Defence of his Master, and in the Affray the Master is killed, 'tis Manslaughter in the Servant. *Sid.* 250. A sud-

Sudden
Provoca-
tion.
2 Cro. 296.

A sudden Provocation, and Death ensuing, doth so far ex-
tenuate the Crime as to make it Manslaughter.

As an Husband killing another committing Adultery with his
Wife. *Raym.* 212.

A Prisoner in Execution for Debt escaping, and the Keeper
coming to the Place where he is, kills him either in Pursuit
or Resisting, 'tis Manslaughter. 1 *Roll. Rep.* 189.

Unlawful
Acts.
* Aleyn
Rep. 12.

Unlawful Acts where Death ensues, are, viz. playing at
Foils, * throwing Stones, shooting at Deer in another Man's
Park, Forcible Entry, and ejecting another, and such like,
are unlawful; but without a malicious Intention to kill, and
therefore Manslaughter.

Bailiffs coming to serve an Execution, and the Debtor shuts
his Door, which they break open, and one is killed; 'tis Man-
slaughter, because the Breaking of the Door was unlawful.

The Offender has the Benefit of the Clergy the first Time,
and forfeits his Goods and Chattels.

If a Man is in Execution for Debt, and escapes, and the
Gaoler hearing where he is, attempts to take him, and he re-
sisting is killed by the Gaoler, 'tis Manslaughter.

1 *Roll.*
Rep. 189.

My Lord *Rolle* distinguishes where a Man is in Execution
for Debt, and where he is only committed for Felony, and
escapes; for in the first Case he says, the Gaoler must go back
as far as he can before he attempt any Violence upon the Par-
ty, otherwise if he kill him, it may amount to more than Man-
slaughter: But I think 'tis his Business to press forward, for
otherwise he shall never retake his Prisoner.

Where a Man is found guilty of this Offence, he is seldom
bailed till Clergy had; but Mr. *Lisle* was bailed, which you
may see in Title *Appeal*; though it was denied to Mr. *Keat* in
the same Term. *M.* 8 *W.*

Chance-medley, or per Infortunium.

THIS is where a Man is killed by another casually, when
he is doing any Thing which is lawful, and without a-
ny Intent to hurt:

As shooting at a Bird, which is a lawful Act, and killing a
Man; the Father or Master correcting a Son or Servant, and
Death ensuing.

A House was building thirty Foot from any common High-
way, and one of the Workmen being about to throw a Piece
of Timber out of the House, called aloud, *Stand clear*; the
Timber fell upon one of the Labourers, and killed him: This
was held to be *per Infortunium*, for he was doing nothing but
what was lawful and usual to be; and he could have no
ill Intention, because he gave Notice what he was about to do:
But

But if this had been in the Streets of London, it had been Manslaughter, because of the continual Passing of the People; for in such Case it shall be presumed, that his Intention was to do some Mischief.

In this Case the Special Matter must be found, that the Court may judge whether the Killing was *per Infortunium*; and therefore 'tis not sufficient to find it generally.

My Lord Coke tells us, there is no express Judgment in Chance-Medley; but the Offender forfeits his Goods, and hath a Pardon of Course.

This was anciently by *Certiorari* out of Chancery to remove the Record; which being certified, the Lord Chancellor issues forth a Pardon: But now 'tis done by Certificate of the Judge or Justices, &c.

The Form of which Writ, is thus:

Quia accepimus * per recordum dilector' & fidelium nostror' G. T. Mil' & T. P. Mil' Justiciar' nostrorum ad Gaolam in Com' Suffex' deliberans assign' quod R. N. captus & detentus in Gaola p'red' pro morte T. R. unde indictatus est interfecit ipsum T. per Infortunium per quod idem R. Gaole nostre p'red' remissus est ad gratiam nostram ibidem expectand' nos pietate moti perdonabimus eidem R. sextam Partem nostre que ad nos pertinet pro morte p'red' & firmam Pacem nostram ei inde concedimus, ita tamen quod stet rectus in Curia nostra si quis verus eum loqui voluerit de morte supradicta. In cuius, &c.

* The Way now is by the Certificate of the Judge, without a *Certiorari*.

Homicide ex Necessitate.

1. **I**T must be by a proper and lawful Officer, as the Sheriff, and not by a Stranger; for then 'tis Felony. In the Execution of the Offenders.

1. The Judgment must be given by one who had a proper Jurisdiction to try the Cause; for if a Justice of Peace give Judgment in Treason, the Execution is Murder, both in him and in the Officer; if in Trespass he give Judgment of Death, 'tis Felony in him, but not in the Officer.

3. The Execution must be pursuant to the Judgment. See *postea* in Judgment.

In Cases Criminal; as if a Man indicted for Felony is killed by an Officer, whom he resists, having a Warrant to apprehend him. In Advancement of Justice.

Or if a Prisoner is killed by an Officer carrying him to Gaol, and endeavouring to escape after a Felony actually committed.

Or

Homicide.

Or if a Prisoner is killed by a Gaoler, the Prisoner assaults him.

For if a Felon by Resistance or Flight cannot be taken without killing, he who kills him must be acquitted without Forfeiture of Goods, because every Man is warranted by Law to apprehend him; but then there must be a Felony actually done; which Circumstance is not required where a Man hath a Warrant to take a Felon. 3 Inst. 221.

In Civil Cases.

Resisting an Officer, who hath any legal Process, and killed by him.

Upon Not guilty pleaded, the Special Matter must be given in Evidence; and it being found for him, he is to be acquitted without Forfeiture or Pardon.

But in all these Cases the Necessity must be unavoidable, and there must not be any Colour of Malice.

Homicide is justifiable, and no Forfeiture:

In Defence
of House
or Goods.

As if I kill a Man who sets my House on Fire; or a Thief who steals my Goods, or comes to rob me.

If a Woman kill a Man that endeavoureth to ravish her: But if I kill a Man claiming a Title to my House, and endeavouring to enter, 'tis Manslaughter.

Se defen-
dendo.

This *Homicide* is excusable, but the Goods are forfeited.

But then it must be done only upon an inevitable Necessity, and he must give back as far as he can without endangering his own Life.

And the mortal Wound must be given after the Party retires to the Wall; for if before, 'tis Manslaughter.

Casual Death.

THIS is when a Man is slain otherwise than by the Hands of another; as by a Fall from a Horse or Cart, &c.

'Tis the proper Office of a Coroner to enquire of such Death, which he is to do by Jury, &c.

Therefore
cannot be
claimed by
Prescripti-
on.

Any Thing which is the Cause of such Death, is forfeited to the King, but not till found by Matter of Record; and this Forfeiture shall have Relation from the Time of the Stroke given; so that if the Owner sell the Goods after that Time, and before the Inquisition taken, the Property is not bound, but the King shall be entitled to it.

Deodand.

MY Lord Coke defines this to be when any moveable Thing which is inanimate, or a Beast animate, causeth the untimely Death of a Reasonable Creature, without the Will, Offence or Fault of himself; but it must be on the Land, and not on the Sea; Inst. 57.

This being found by Inquisition, is forfeited to the King, as being *pretium Sanguinis*; to be distributed in Works of Charity, to appease the Wrath of God.

A Cart met a Waggon loaded, and endeavouring to avoid it, drove up a Bank and overturned, and threw the Man out of the Cart before the Wheels of the Waggon, which ran over him and killed him: At first it was doubted whether the Cart was forfeited; it was agreed that the Waggon, Loading, and all the Horses, were Deodands; and at last it was held, That the Cart was likewise; for where a Horse threw a Man in a River, and the Stream carried him to the Wheel of a Mill, which killed him, both the Horse and Wheel were forfeited; but if he had been thrown from his Horse by the Violence of the Stream, the Horse had not been forfeited. Salk. 220.

If the Party slain by a Fall is under fourteen Years of Age, Deodand. then a Deodand is due; but if he be kill'd by an Ox or Horse, &c. Raym. 108. the Horse is no Deodand.

This seems to be a very nice Distinction in the old Books, that the Horse or Cart from which a Boy under 14 Years falls, should be a Deodand; and yet if he is killed by a Horse, and is under that Age, the Horse shall not be a Deodand. I do not find any Reason given by Justice Staundford, or any of them, for this Distinction, nor by my Lord Coke himself, who took it upon the Authoity of the Old Writers; but probably this may be the Reason, viz. A Boy under 14 may not have the Discretion to ride the Horse, and therefore may be the Occasion of his own Fall; and this seems to agree with the Definition above-mentioned: However, the Law is otherwise now; and Justice Twisden was of Opinion, That there was no more Reason for this Distinction, than for to cut of the first Joint of the Thumb of a Cut-purse, which was Law formerly, but now 'tis not.

A Man ringing a Bell, was strangled with a Rope; it was a Question, Whether the Bell should be a Deodand or not, because as 'twas objected, it was fastened to the Freehold, and given to God before? There was no Judgment given; but two Judges were of Opinion, That it was not a Deodand. 1 Levinze 136. Two Men riding over the Trent, were drowned by the Violence of the Water; their Horses were not Deodands because the Men were drowned by the Violence of the Stream,

Hops.

and not carried by their Horses out of Depth. 2 Roll. Rep. 33.
2 Cro. 483. Poph. 136.

Inquisition, taken *super visum corporis*, found that a Wheel of a Forge moved to the Death of the Man, and the Court was moved to stay Process for the Seising it, because it was Parcel of the Freehold, as are the Wheels of a Mill, or a Millstone, the Mill it self being a known Thing in the Law, and so are the material Parts of it, and therefore if one of the Millstones is taken out to dress, and the Mill is divided whilst the Stone is out, yet the Stone will pass as Part of the Mill, so the Process was stayed.

Hops.

9 A. c. 12. **T**HE Collectors of the Duties on Hops may be sworn before Justices of Peace, for the due Execution of their Office, and they are to give a Certificate thereof.

Pickers or Gatherers of Hops, or other Persons privately carrying away Hops from the Place of Growth, or from the Place where they shall be put, in Order to be cured, bagged and weighed, shall forfeit * 5 s. per Pound; and in such Case the Officers may seize the Hops, and bring the Offender before a Justice of Peace; and if he is convicted of the Offence and doth not forthwith pay the Penalty, and no sufficient Distress can be had, then the Justice may commit him to the House of Correction, there to be whipt and kept to hard Labour for any Time not exceeding one Month: Any Person obstructing an Officer, or beating or abusing him, forfeits 5 l. and if no Distress can be taken, then to be committed as aforesaid.

* One Moiety to the Crown, the other to the Informer.

The Warrant to levy the Penalty.

To the Constable, &c.

Surrey, ss. **W**Hereas it was on the Day of the Date hereof duly proved before me, That T. P. of, &c. did on the 2d Day of September last past privately carry away two Pounds of Hops from, &c. that being the Place where the said Hops were put, in Order to be cured, by Reason whereof he hath forfeited 10 s. according to the Statute in that Case made and provided. These are therefore to require you to levy, &c.

6 G. c. 21. After 1 August, 1720. Planters of Hops must give Notice of the precise Time of bagging, or casking, or weighing their Hops;

Hops; and this must be under their Hands to the next Officer of Excise, and at least 24 Hours before they begin in the first Week, and 48 Hours before any other Time of bagging, &c. under the Pain of forfeiting 50 *l.* for every such Neglect of Notice.

Planters, &c. must keep just Scales and Weights, and permit the Officer, &c. to use them, and shall not have any false Weights; offending in each of these Particulars forfeits 20 *l.*

Horses.

IN order to preserve the Breeding of strong Horses, a Law Breed of was made 32 *H. cap. 13*, prohibiting Persons to put Stone-Horses above two Years old, and under fifteen Hands high (every Hand being four Inches) into Forests or Commons where Mares are kept, upon Pain of forfeiting the Horse: After this Manner;

Viz. The Horse must be brought to the next Pound by the Keeper of the Ground, Constable or Headborough of the next Parish, and must be measured by him in the Presence of three other sufficient Men; and if found under that Stature, he who seized him, may take him to his own Use.

Refusing to measure, or be present at the Measuring, Forfeiture is 40 *s.* a-piece for every Offence; one Moiety to the King, the other to the Prosecutor.

Justices in Sessions may hear and determine Offences against this Act, and Stewards in Leets may take Presentments only, but must certify them to the next Sessions, upon Pain of 40 *s.*

But this Statute doth not extend to the Fen-Grounds in *Ely*, nor to the Counties of *Cambridge, Huntingdon, Northampton, Lincoln, Norfolk and Suffolk*; so that the Horses there kept are not under thirteen Hands; nor to the County of *Cornwall*. 8 *El. 8.* 21 *Fac. 28.*

Scabbed or infected Horses shall not be put in common Fields, on Pain to forfeit 10 *s.* to the Lord of the Leet.

Next to breeding Horses, Care was taken that they should not be exported; and therefore by an Act of 1 *Ed. 6. cap. 5.* it was provided, That no Person should sell or convey, &c. any Horse, Mare, &c. out of *England*, without the King's Licence; the Forfeiture is of the Horse it self, and 40 *l.* more to be divided between the King and Prosecutor.

The Justices had Power to hear and determine this Offence in their Sessions.

But now, by 22 *Car. 2. cap. 13.* any Horse may be exported, paying 5 *s.* at the Custom-House.

To prevent selling of Horses of a clandestine Manner. Horses being often stol'n, and sold in Stables, and in private Places, a Statute was made 2 & 3 Ph. & M. cap. 7. to prevent that Mischief; it provides,

That Owners of Fairs and Markets shall appoint a Toll-taker; and where that is not taken, a Book-keeper, who shall sit in the Fair from Ten in the Morning till Sun-set, or forfeits 40 s. for every Default.

He must enter into his Book, the Names and Dwellings of the Buyer and Seller, the Colour and Mark of the Horse sold, or forfeit 40 s.

The Book in which the Entry is made, must be delivered a Day after the Fair to the Owner or Keeper of the Fair, who shall make a Note of the Number of Horses sold, and shall subscribe it, on Pain of 40 l.

The Property of stoln Horses shall not be altered,

1. If not rid, or stand open in the Fair one Hour. This my Lord Coke tells us is in Affirmance of the Common Law.
2. All Parties to the Contract must be present with the Horse, and before the Book-keeper.
3. Their Names must be entred in the Book, and their Dwellings, and the Colour and Mark of the Horse.

Justices in Sessions have Power to hear and determine Offences against this Law.

But Horse-stealing still encreasing, by Reason the Thief could sell them in Fairs and Markets, pursuant to the afore-said Act, to Horse-Courers, and at a great Distance from the Owners; therefore to preserve the Property still in them, another Law was made, 31 Eliz. cap. 12.

31 Eliz.
cap. 12.

1. That no Sale shall be made in Fairs, unless the Toll-taker or Keeper know the Seller, or unless he bring some credible Person who knoweth him.
2. The Names, Surnames, Mysteries and Dwellings of both of them, and the Price of the Horse sold, must be entred in the Book.
3. The Book-keeper must give the Buyer a Note of these Particulars subscribed by him, if required, paying 2 d. for the same.
4. He who sells without being known to the Book-keeper, or without bringing a Voucher; and he who voucheth without knowing the Seller; and the Book-keeper making

3 Lut.

making Entry without knowing either, forfeits each of them 5*l.* one Moiety to the King, the other to the Prosecutor, and the Sale is void.

Now though the Sale be in all Circumstances pursuant to this Act, yet the Property is not bound, if the right Owner claim within six Months after 'tis stoln; which he must do in this Manner.

If the Horse is found in a Town Corporate, then he must claim him before the Mayor, or Chief Officer; if in the County at large, then before a Justice of the Peace.

The Proof must be by two Witnesses upon Oath, who must depose before such Mayor, or Chief Officer, or Justice, within forty Days after the Horse is found, that the Property is in the Person claiming, &c. and that the Horse was stoln from him within six Months next before the Claim.

Upon this Proof, the Party shall have his Horse, paying the Buyer what he shall depose he gave for the same.

Clergy taken away from Accessaries before and after the Fact.

Selling a Horse by a false Name maketh the Sale void.

Indictment against a Horse-stealer and his Accessary after the Fact.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pzed' Labourer, 25 die Maii, Anno Regni, &c. vi s ar-
mis apud H. pzed' in Com' pzed' unum Spa-
donem (Anglice vocat' a Gelding) coloris nigri & pretii decem
librarum de bonis & catallis cujusdam M. V. adtunc & ibi-
dem invent' felonice cepit & asportabit contra pacem dicti
Domini Regis nunc corzon' & dignitat' suas, & quod T. O. nu-
per de H. pzed' in Com' pzed' Labourer, sciens quod pzedat'
J. O. Feloniam pzed' apud H. pzed' modo & forma pzed fe-
cisse & perpetrasse eundem J. O. apud H. pzed' in Com' pzed'
die & anno supradictis felonice recepit, confortabit & auxilia-
tus est post Feloniam pzed' sic per ipsum J. O. ut pzedetur com-
missam contra pacem, &c.

Houses, where they may be broke open. See Arrests,
and Doors.

Houses of Habitation.

These are privileged by the Law in several Respects.

They are Castles for the Defence of the Inhabitants.

They protect the Persons of Men from any Arrests on *Mesne* Process at the Suit of any Subject.

A House may be defended by Force against Thieves or Robbers; and if kill'd 'tis not Felony.

But notwithstanding these Privileges, it may be broke open in these Cases following; the Person first signifying the Occasion of his Coming, and requiring the Opening of the Doors, and being refused.

1. In Treason, Felony, or Suspicion thereof.
2. To apprehend any Person who hath dangerously wounded another, being freshly pursued.
3. An Affray being in a House, the Constable may break it open to keep the Peace.
4. Upon a forcible Entry, or Detainer, found by an Inquisition.
5. To apprehend any Person upon a *Capias utlagatum*, or *Fine*, or upon Process of Excommunication, or upon a Warrant of the Peace, or Good Behaviour.
6. Upon a Recovery in a real Action, the Sheriff may break it open to deliver Possession.
7. And generally in any Case where the King is Party, or hath any Interest, for no Man's House shall protect him against the King.

§ G. c. 21. By an Act 7 *W.* several Duties were granted on Houses for a Term of Years, and by an Act 8 *Anna*, Duties on Houses having 20 Windows, or more, were granted; which Duties by subsequent Acts have been made perpetual, 'tis now enacted, That after 1 *August*, 1720. the Justices of the Peace, who are Commissioners of the said Duties, may, within their respective Limits, appoint two Persons, whom they shall think responsible, to the Collectors within the Parishes, of the said Duties (whether their Names are presented by the preceding Collectors, or not) and if there shall be any Arrears of the said Duties, by Reason of the Failure of any such Collectors, for which the Parish is answerable, then Two or more Justices, who are Commissioners for these Duties, may cause such Arrears to be raised within that Parish, on all such Houses as are liable to pay the Duties, and to cause the same to be raised; and for Default

fault of Payment, to levy it by such Ways and Means as the Duties on Houses are to be raised, and to cause the Money so raised to be paid to the Receiver General of the said Duties, &c.

House of Correction.

MAny Laws have been made for punishing Beggars and idle Persons, but none to set them on Work, before 29 *Eliz. cap. 4.* which gives the Justices in Sessions Authority in three Things :

1. To appoint the Houses of Correction to be built.
2. To make Orders for maintaining and governing them when built.
3. To see that the Offenders sent thither be set to Work, or punished.

By Vertue of this Statute the Justices of Peace may encrease the Number of Workhouses, if they find it necessary ; but it must be at the Charge of the whole County ; for the Statute is not expired, but it is continued by the Statute 3 *Car.* till it be otherwise ordained, and stands upon the same Foot with 43 *Eliz.* which is no otherwise continued.

My Lord *Coke* tells us, That for some Time after this Law was made, and until the Justices became remiss in their Duty, there was not a Rogue to be found in the Kingdom.

But the Justices taking no Care for the building or providing such Houses, and neglecting to put the Law in Execution ; another Statute was made. 7 *Jac. cap. 4.*

That a House of Correction shall be built or provided in every County within a Time therein limited, with all Conveniencies to set Rogues and idle People to work, or every Justice shall forfeit 5 *l.* one Moiety to the Prosecutor, the other towards the Building the House. Building a House of Correction.

Which House, when built or purchased, shall be conveyed to Persons appointed by Justices in Sessions, in Trust to be employed for the Keeping, Correcting, and Setting to Work Persons sent thither.

He is to be appointed by the Justices in their Sessions ; he is to set on Work, and immediately to correct Persons by whipping or fettering them, if unruly. Master thereof.

He is yearly to have such an Allowance as Justices in Sessions shall think fit, which is to be paid quarterly by the Treasurer of the County-Stock ; and in Default of such Payment, he may levy it upon the Treasurer by Distress and Sale of his Goods.

He is to give Account quarterly, at the Sessions, of all Persons who have been committed to his Custody ; and if any e-

House of Correction.

scape without being discharg'd by due Course, the Justices in Sessions may fine him at Discretion; the Fine is to be paid to the Treasurer of the County Stock.

The Justices shall meet twice in every Year to put this Act in Execution; and before their Meeting, shall by Warrant command Constables, &c. of every Hundred, Town and Hamlet, to make a general but private Search in one Night within their Precincts, to apprehend Rogues, Vagabonds and idle Persons, and to bring them before the Justices.

What re-
quir'd to be
done by the
Justices and
Constables.

The Constables at that Meeting must give an Account in Writing upon Oath, and under the Minister's Hand, what Rogues have been taken in their Precincts, and how many punish'd, and convey'd to the House of Correction.

A Constable neglecting in the Premises, as also at the Charge of the Hundred, safely to convey such Rogues, &c. with all other idle and disorderly Persons, as by the Justices Warrants shall be sent thither, (these Words my Lord Coke says, ought to be specially observ'd) may be fined at Discretion by Justices, so as it exceed not 40 s.

Who may
be sent
thither,

Alehouse-keeper selling Ale after Conviction.

Any Person running away, or threatning so to do, and to leave their Families to the Parish; but of this, two Witnesses must make Oath before two Justices.

Bastard-Child, the Mother thereof not able to keep it; but if a Woman is deliver'd there, it must be sent to the Place from whence she came. 2 Bulst. 338.

Beggars sturdy.

Cheaters must be bound over to Sessions, and they may send them to the House of Correction.

Corn-spoilers.

Hedge-breakers.

Labourers under 30, and not haying wherewith to live without working, and refusing.

But if they have Means to support themselves, and they are idle and disorderly, may be sent thither.

Orchard-Robbers.

Parents of poor Children, enticing them from their Masters.

Poor Children refusing to be put Apprentices.

Rogues, whose Place of Birth or last Dwelling for a Year cannot be known, or refusing to tell the Place of Settlement.

Servants running away, or those who are idle and disorderly, or who are out of Service, and warned by two Justices to go to Service by a Day prefix'd.

Trespassers common.

Vagabonds, and small Offenders. 6 G. cap. 19.

Wood-cutters.

And

And generally any Person whatsoever who lives in a profuse Manner, having no visible Estate to support himself; any such Person may be set to Work there, but not whipp'd till convicted in Court, and may be continued there till he satisfy the Justices how he lives. Sid. 281.

But the Way of Conviction is not appointed in many of these Cases, therefore it must be in Sessions, and from thence the Commitment must be made; and in the mean Time the Justice may require Sureties for his Appearance there.

Mittimus of an idle and disorderly Person.

To the Keeper of the House, &c.

Suffex, ff. **I** Send you herewithal, J. O. of H. in the said County, * (If a Scr-
being an idle and disorderly * Person, and who will not vant, then
employ himself, or be employed in any honest Way to get a Livelihood; (say) And
I therefore require you to receive the said J. O. into your Custody, and will not
him safely to keep until he shall be lawfully discharged; and in the stay in Scr-
mean Time to set him to Work, and to give him moderate Punishment vice.
by Whipping, allowing him also such Maintenance as he shall deserve
by his Labour; and that you bring the said J. O. to the next Quarter-
Sessions, &c. together with this Warrant. And hereof fail not, &c.

For one taken by the Watch.

To the Keeper, &c.

Suffex, ff. **W** Hereas J. O. was brought before me this present
Day, by R. K. Constable of, &c. being taken last
Night by his Watch, and is charged with wandring abroad, and other
idle, lewd and disorderly Behaviour and Course of Life, contrary to
the Laws. These are therefore to require you to take the said J. O.
into your Custody, and him safely to keep until he shall be delivered by
due Course of Law; and in the mean Time to set him to Work, and
to give him such Punishment and Maintenance as by Law is required;
and that you bring the said J. O. to the next Quarter-Sessions to be
bolden, &c. together with this Warrant, &c.

Hue and Cry.

T HIS is a Pursuit of any Person after a Felony commit- 13 Ed. 1.
ted, and flying for the same. 27 Eliz.

'Tis to be made from Town to Town, and from County to
County, by Horsemen and Footmen; and of this there are
two Sorts:

1. Hue

1. Hue and Cry by the Common Law ; which is, where a Felony is committed, or any Person wounded, the Party griev'd, or any other in his Behalf, may resort to the Constable of the next Town, and acquaint him therewithal, describing the Party, and telling him the Way he is gone ; who thereupon is to raise the Town, and to give the next Constable Notice, and he the next, and so on to the Sea-side ; and this my Lord Coke says, was the Law before the Conquest.

And those who neglect to make Hue and Cry, or do not pursue it when made, shall be fin'd and imprison'd by the Sessions.

2. Hue and Cry by Force of Statutes are many, but chiefly upon the Statutes of Robberies.

As by the Statute of *Winton*, the whole Hundred is made liable in which a Robbery is committed ; but now by 27 *Eliz. cap. 13.* the Inhabitants of any Hundred where Hue and Cry is made ; and if they shall neglect to pursue, must answer one Moiety of such Damages which shall be recovered against the other Hundred.

Cro. Eliz.
753.
Moor 62c.

This Statute of *Ed. 1.* extends only to Robberies done to the Person, for it was made for the Safety of Travellers ; and therefore if a House should be robbed in the Day-time, and the Felons escape, and Hue and Cry is made, and they are not taken, the Hundred shall not be answerable for the Reason above-mentioned.

Noy 155.

The Person robb'd should give Notice as soon as he can. He usually goes to a Justice of Peace, and is examined after this Manner.

The Examination of R. K. of, &c. taken upon Oath before R. B. Esq; one of his Majesty's Justices of the Peace for the County of, &c. on the 25th Day of May, 1724.

THIS Examinant saith, That on Tuesday the 19th Day of this Instant May, he was assaulted in the Highway leading from, &c. at or near a Place called, &c. about Ten of the Clock in the Morning of the same Day; by three Men on Horseback, who seiz'd this Examinant, and carried him out of the Road to a By-place adjoining, and robbed him of, &c. And further saith, That he is since informed that the said Highway and By-place are both in the Parish of H. and within the Hundred of, &c. in the said County, and that he did not then, nor yet doth know either of the Persons who committed the said Robbery.

A War-

A Warrant for a Hue and Cry.

To all Constables, Headboroughs, and other Officers, as well in the said County of *Suffex*, as others, to whom the Execution hereof shall belong.

Suffex, ff. **W**Hereas I am credibly inform'd, That three Persons (here describe their Age, Colour, Apparel, Horses, &c.) did on the 19th Day of this Instant May, assault and take from R. K. of, &c. ten Pounds, &c. and that they are since fled for the same, and not yet apprehended: These are therefore to command you forthwith to make diligent Search within your Precincts for the said Persons, and to make Hue and Cry after them from Town to Town, and from County to County, and that as well by Horsemen as Footmen, according to Law; and that if you shall find them, or either of them, that then you bring them before some one of his Majesty's Justices of the Peace for the County where he or they shall be taken, to be dealt withal according to Law. And hereof fail not, &c.

Hue and Cry raised without Cause, is a Breach of the Peace.

And if it be made falsely, and the Person enter into a House, though with a Constable, and bind and rob the Master in the Night, 'tis Burglary.

The Servant was robb'd, and the Master brought the Action, ^{2 Salk 613.} and the Jury found that he was a Quaker and would not take the Oath requir'd by the Statute, *whether he did know any of the Robbers*; adjudg'd that the Master may bring the Action, and that the Oath of the Servant is sufficient, especially if he was robb'd not in the Presence of his Master; but if robb'd in his Presence, then the Master must make Oath, which being this Case, and the Quaker refusing to make Oath, the Hundred is not liable, for the Statute 27 Eliz. was made in Favour of the Hundred to prevent Combination between the Robbed and Robbers.

The Servant sued the Hundred for a Robbery of his Master's Goods, and declared that he was possess'd of them *ut de bonis suis propriis*; the Jury found, that the Plaintiff was a Servant, and robb'd of 20 l. of his Master's Money, and 20 s. of his own Money: Adjudg'd that the Action is well brought by the Servant, for by the Possession he is entitled to the Money *ut de bonis suis propriis* against all Men but him who hath the very Right. ^{2 Salk. 614. 4 Mod. 303.}

A Man was set upon in one Hundred, and carried into another Hundred and there robbed; adjudg'd that the last Hundred shall be only charg'd, because there the Robbery was committed, and not before: Now upon the Statute of Hue and Cry the Hundred is liable for not taking the Robbers; but their Taking the Goods shall not relate to the first Assault, so as to make

make it a Robbery *ab initio* because the Assault was not the necessary Cause of the Robbery, as a Stroke is of a Murder, for a Man may be assaulted in one Hundred, and carried into an *House* in another Hundred and there robb'd ; or he may be assaulted in the Day-time in one Hundred, and carried into another and there robb'd in the *Night-time*, in which Cases there is no Remedy by the Statute, but 'tis not necessary to charge the Hundred that the Robbery should be committed on the Highway.

2 Salk. 614. After a Verdict against the Hundred upon the Statute, it was mov'd in Arrest of Judgment that it did not appear that the Oath was made before a Justice of Peace living within the Hundred, but within the County, which was not pursuant to the Statute 27 *Eliz.* for that requires the Oath to be made before a Justice of Peace living within the Hundred, &c. but adjudg'd that this is not requir'd by the Statute of *Winton*, and that the Statute 27 is only directory, and that the Declaration had been good, tho' it had not been set forth that any Oath was taken before a Justice of Peace.

Hundred.

TO charge the Hundred with a Robbery, these Things must be done :

- Noy 155.
1. The Person robbed must with all convenient Speed give Notice of the Robbery to some Inhabitant near the Place where he was robbed.
 2. He must be examined upon Oath within twenty Days next before he brings his Action, by one Justice dwelling near the Hundred where the Robbery was done, whether he knew the Robbers, or either of them, and if he did know them, then he shall be bound before the Justice to prosecute them.
 3. The Hundred is not chargeable if any of the Offenders are taken, though after the twenty Days limited by the Statute of 28 *Ed. 3. cap. 11.* for the Taking them, *Sid. 11.* But if not taken within forty Days after the Robbery, then the Hundred must answer the Loss.
 4. The Action must be brought within a Year after the Robbery done.

After Recovery and Execution of Damages it may be levied on one Person ; but then upon Complaint, &c. two Justices of the Hundred, *Quorum unus*, &c. may tax in Proportion the Town, Villages, Parishes and Hamlets of the said Hundred, to make an equal Contribution to relieve the Persons against whom the Execution was taken.

After

After such Taxation, the Constables and Headboroughs of every Parish of the said Hundred shall assess the Inhabitants according to their Abilities, to pay the Sum taxed or laid by the Justices upon their respective Parishes.

Constables, upon Refusal of any Inhabitant to pay the Assessment, may distrain and sell, rendring the Overplus, and after it is levied, shall within ten Days deliver it to the Justices, or one of them, and the Justices must pay it to the proper Persons.

Like Taxation for a Contribution of a Moiety out of a Hundred where any Default was in Pursuit, &c. to re-imburse the Hundred where the Robbery was done.

And 'tho' no Man ought to travel on a Sunday, yet if he doth and is robb'd, the Hundred shall be charged.

In order to bring the Action, the Person must make an Oath as followeth.

June 1. 1724,

Suffex, ff. **R**. B. of C. in the said County, Gentleman, came before me H. P. Esq; one of his Majesty's Justices of the Peace, &c. the Day and Year above written, and made Oath, That on Monday the, &c. about eight of the Clock, &c. travelling from, &c. he was assaulted in the Common Road, three Miles from, &c. in a Field, by three Horsemen, one of them being a Man of about 25 Years of Age, &c. (describing also their Habits and Horses, &c.) which said three Persons then robbed this Deponent, taking from him by Force 20 l. and a Mare; and the said R. B. did farther depose, That he doth not know the said Persons, or either of them.

R. B.

Jurat' Die & Anno supradictis
coram me,

H. P.

A Warrant to assess and levy the Money for a Contribution, being recovered against the Hundred, and levied on two Men.

To the High Constable of the Hundred of L. and to all Petty Constables and Headboroughs of the said Hundred.

Suffex, ff. **W** Hereas R. B. of, &c. was lately robbed of 20 l. in the said Hundred of L. and hath since obtained a Judgment at Law against the Inhabitants thereof; which said Sum of 20 l. hath been levied and charged only upon J. S. and T. P. two of the Inhabitants of H. within the said Hundred, who have now made Complaint to us thereof: And whereas we have set a Rate upon

upon the Parishes and Villages within the said Hundred for the raising the said Money, pursuant to the Statute in that Case made and provided; which said Rate is hereunto annexed: These are therefore to require you the said High Constable forthwith to give Notice thereof to the Petty Constables and Headboroughs, immediately after such Notice, equally to set and imposed upon the several Inhabitants of the said Parishes, the respective Sums thereon rated, according to their Method of Rating for the Poor of the said Parishes, and afterwards to demand the same, and to levy it by Distress and Sale of the Goods of such of the said Inhabitants respectively, who shall refuse to pay the Sum on him or them set or imposed, and having received and levied the same, that you do forthwith pay it unto us, or one of us, that the said J. S. and T. P. may be reimbursed: And you are farther required to give an Account unto us, within ten Days next after the Date hereof, what you shall have done in the Premises: And hereof fail not. Given under our Hands and Seals, &c.

The Form of the Rate.

Suffex, ff. **A** Rate made by R. B. and G. G. Esqrs; two of his Majesty's Justices of the Peace for the County of Suffex, for the raising of 50 l. on the Rape of L. which said Rape is charged with the said Sum which hath been levied upon A. S. and W. N. two of the Inhabitants thereof, by Vertue of a Judgment had and obtained by R. S. against the said Rape, for a Robbery done and committed therein.

	l.	s.	d.
The Parish of H. ———	05	00	00
The Parish of B. ———	06	00	00
The Parish of R. ———	08	00	00
The Parish of O. ———	10	00	00
The Parish of N. ———	07	00	00
The Parish of L. ———	10	00	00
The Parish of T. ———	04	00	00

All which Parishes are within the Rape of L. aforesaid.

* It must be commenced within a Year and a Day after the Robbery done.

The * Action against the Hundred must always be by *Writ*, and not by *Bill*, because 'tis brought against the Inhabitants of a whole Hundred; who, by Reason of their Number, cannot be *Custodia Mareschalli*, &c.

And it is not material in what Parish the Robbery is done, so 'tis done in the Hundred against which the Action is brought; but the Parish must be alledged in the Declaration.

Neither is it material, whether 'tis done after Sun-setting, or before; for the Hundred is chargeable if the Robbery is committed during Day-light, which is a convenient Time for People to travel. 7 Rep.

If Robbers seize a Horse in one Hundred laden with Money, and they lead him into another Hundred and take away the Money, there the first Hundred is chargeable, because the first Seizing was a Robbery; but if the Owner himself had led the Horse into another Hundred, then that Hundred where the Money was actually taken had been liable, because till then it was in his Possession. Two Hundreds.

And therefore it has been adjudg'd, that if a Man is set upon in one Hundred, and carried into another and there robb'd, that Hundred is liable, because the Money was not out of his Possession in the Hundred where he was seized. *Goldf.* 86.

The same Law if a Man is assaulted in one Hundred and pursued to another, and there robb'd. *Hut.* 125.

And the Reason is, because the first Hundred is not bound to pursue for an *Affault*, but for a *Robbery*; and the second Hundred is chargeable, not because they did not prevent the Robbery, but because they did not take the Robbers within forty Days; therefore they are bound to pursue where the Fact was committed, and shall be liable if they do not take them within that Time.

If Goods are sent by a Carrier who is robb'd, he must make Oath, and not the Owner. 1 *Leon.* 323. Who must make Oath.

A Servant deliver'd his Master's Money to a *Quaker* to carry Home; they were both robb'd, and the Servant made Oath, but the *Quaker* refused, and the Master brought the Action: It was adjudg'd ill, as to the Money of which the *Quaker* was robb'd, but the Servant alone might have maintained the Action.

So if the Servant be robb'd, the Master, tho' absent, may bring the Action. 1 *Cro.* 26. 2 *Roll. Abr.* 686. But in this Case the Servant must make Oath, &c. and the Master may be a Witness at the Trial, to prove the Delivery of the Money or Goods to the Servant, though in his own Case. *Note*, This was against the Opinion of *Rolle*, Chief Justice.

Where a Carrier is robb'd he is liable to make Satisfaction in Respect of the Reward he takes, and not because the Hundred is answerable over to him; for a Carrier was liable at Common Law, because he might be robb'd by Combination, and that might be so secretly contrived, that no Proof could be made of it; but the Hundred was made liable by the Statute of *Winton*.

He is not a *Judge* but a *Minister* in this Case, and therefore if he refuse to administer the Oath, &c. he is liable to an Action at the Suit of the Party grieved. Justice of Peace.

And though the Statute of 27 *Eliz.* directs, that the Oath and Examination shall be before a Justice inhabiting in or near the Hundred, yet if it be taken by a Justice in *London*, dwelling near the Hundred, 'tis good, because the Statute gives him

him no Jurisdiction, but is directory only how and in what Manner the Oath and Examination should be. 1 Cro. 153.

2 Cro. 406. A Traveller was robb'd on a *Sunday* in Time of divine Service, if he makes Hue and Cry according to the Statute, the Hundred shall be charg'd, for many Persons are necessitated to travel on that Day, as Physicians, &c. and 'tis an Act of Justice to pursue the Robbers, and all ministerial Acts done on a *Sunday* are good.

Goldf. 86. A Carrier coming towards *London* was assaulted in an Hundred, and the Felons took his Horse and Pack in which the Money was, and led him into another Hundred where they robb'd him; adjudg'd that the first Hundred is only liable; for he shall be said to be robb'd, where he was first assaulted, and where the Horse was first taken; but if the Carrier had led his Horse himself into the other Hundred, then that Hundred should be charged; because by his leading his Horse the Money was still in his Possession, and no Robbery was done till he came into the other Hundred.

Hunting.

SUSPECTED of Hunting unlawfully in Chases, Warrens or Forests in the Night-time, with painted Faces or other Disguises, may by a Warrant be brought before a Justice; and if upon Examination he conceal the Hunting, or any of the Offenders, such Concealment is Felony; if he confesseth, then it is an Offence finable by Justices at next Sessions. 1 H. 7. cap. 1.

2 Roll. Rep. 134. My Lord Rolfe tells us, there are four Things requisite to make this Offence Felony:

1. An Information to a Justice of Peace for the Offence.
2. His Warrant upon it.
3. The Examination of the Offender.
4. His Denying the Fact.

But the Felony seems to consist chiefly in the Denying the Fact, the Words of the Statute are, *wilfully concealing it*, but upon the Conviction the Offender shall have Clergy.

Convicted of Hunting, &c. with painted Faces, is Felony: disobeying a Justice's Warrant, or rescuing himself from the Officer, so that the Warrant cannot be executed, Felony.

When the Offender is examined, if he confesseth, he may be bound to the Good Behaviour with Sureties, or be committed; otherwise it may happen that he may not be found if any Concealment should be prov'd against him, because that is made Felony. 1 H. 7. cap. 7.

Hunting in Parks, Woods or enclosed Grounds, 3 Months Imprisonment, bound to good Behaviour, with Sureties for seven Years.

Justices in Sessions may determine this Offence; the Offender shall pay treble Damages, to be assessed by Justices in Sessions; and upon Satisfaction and Acknowledgment of the Offence, they may release the Good Behaviour. 5 Eliz. cap. 21. 3 Jac. cap. 13.

Any Hunting unlawfully by more than Three, is a Riot.

A Warrant against one Hunting in Corn.

Suffex, ff. **W** Hereas Complaint hath been made unto me, That ^{23 El. c. 10.} P. S. of the Parish of H. Gent. did, on the 27th ^{One Justice} of June last past, hunt with Spaniels in the Ground of W. A. and ^{hath Power} without his Consent, there being Corn then standing, growing, and eared ^{to examine} in the same Ground, by Reason whereof the said P. S. hath forfeited ^{and to bind} the Sum of 40s. to the said W. A. being the Owner of the said Corn: ^{over to the} These are therefore in his Majesty's Name to command you forth- ^{Sessions,} with upon Sight hereof, to warn the said P. S. personally to come be- ^{where this} fore me, or some other Justice of the Peace of this County, to be ex- ^{Offence is} amin'd concerning the Premises. Given under my Hand and Seal, &c. ^{to be tried} upon an ^{Informa-} tion.

If the Offender doth not appear on the Return of the Warrant, then instead of those Words (to be examined) say,

To give Bond with Sureties for his Appearance at the next General Sessions of the Peace to be holden for this County, to answer the Premises; and if he shall refuse so to do, that then you safely convey him to the Gaol of, &c. and deliver him to the Keeper thereof: Commanding you the said Keeper to receive the said P. S. into your Custody, and him safely to keep until he shall find Sureties as aforesaid. Given under my Hand and Seal, &c.

A Licence to hunt, and take away Dogs, &c.

I Sir T. P. of, &c. have given and granted, and by these Presents do give and grant unto R. B. of, &c. Gent. full Power to hunt from Time to Time, and at all Times hereafter, for and during the Term of, &c. in or upon the Manor or Lordship of H. in the said County, and in and upon the Lands and Grounds thereof, doing no Damage to the Owner or Owners of any Corn, Grass, Hay or Woods there. And I the said Sir T. P. do hereby likewise give Power and Authority unto the said R. B. at any Time, during the said Term, to seize and carry away the Dogs of any Person or Persons, who shall at any Time hereafter, within the Term aforesaid, be found Hunting within the said Manor, without the Licence or Consent of the said R. B. and to cause the said Dogs to be delivered to the Bailiff of me

E e

the

the said Sir T. P. to be used by me in such Manner as I shall think fit. In Witness whereof, I the said Sir T. P. have hereunto set my Hand and Seal this 28th Day of June, Anno Dom. 1724.

An Indictment for keeping Hounds, not having one hundred Pounds per Annum.

22 & 23
Car. 2. c. 25.

* If Grey-
hounds,
then say,
Anglice
Grey-
hounds.
If a Hare,
then say,
Unum lepo-
rem valoris
unius solidi
infra Pa-
rochiam
præd', &c.

Middl' ff. **J**UR', &c. quod T. W. de, &c. in Com' præd' Yeoman, vicesimo nono die Septembris, Anno Regni, &c. & diversis aliis diebus tam antea quam postea arud H. præd' in Com' præd' habuit & custodivit * Canes ad venand' & sectand' Lepores & Cuniculos, & quod idem T. W. die anno & loco supradictis duos Cuniculos valoris sex denariorum in quodam clauso R. B. de H. præd' Arm' (vocat' the Warren) infra Parochiam præd' cum Canibus præd' venatus est & occidit ubi idem T. W. nunquam habuit terras aut tenementa vel alium statum hereditarium in jure suo proprio vel in jure uxoris sue clari annui' valoris centum librar' per Annum, nec tempore venationis præd' habuit aliquam dimissionem vel dimissiones pro termino vite sue vel pro termino 99 annorum vel pro alio longiori termino clari annui' valoris 150 l. neq; adtunc existens filius & heres apparens alicujus Armigeri vel alie Personæ de altiori gradu aut proprietar' (Anglice, the Owner) alicujus Forestæ, Parcæ Chase, (Anglice, a Chase, vel vivarii in dicti Dom' Reg' nunc contemptum ac contra formam Stat' in hujusmodi casu edit' & provis. &c.

For hunting by Night in a Park, and concealing it.

1 H. 7.
cap. 7.

Middl' ff. **J**UR', &c. quod J. O. de, &c. & R. B. de eadem, Yeoman, primo die Septembris, Anno Regni, &c. congregatis sibi quamplurimis aliis malefactoribus ignotis inter horas undecimam & duodecimam in nocte ejusdem diei vi & armis, viz. baculis bombardis arcibus & sagittis Parcum dicti Dom' Reg' apud L. in Com' præd' fregerunt & intraverunt & duos Damas dicti Dom' Reg' (Anglice vocat' Bucks) in dicto Parco adtunc & ibid' despascen' illicite venati sunt & cum plumbeis glandibus ex dictis bombardis emissis occidebant & sic occisos asportaverunt contra pacem dicti Dom' Reg' ac quod postea, scil' quinto die Septembris, Anno primo supradicto R. W. Parcarius dicti Dom' Reg' parci sui præd' apud H. præd' informabit H. P. Armigerum, unum Justiciar' dicti Dom' Reg' ad pacem in Com' præd' tenend' assign' de illicita venatione illa modo & forma præd' facta qui quidem Justiciarius postea, scil' præd' quinto die Septembris,

rembris, Anno Supradicto direxit Warrantum suum in scriptis cuidam W. V. uni Constabulario Hundredi de L. in Com' pzed' (in quo quidem Hundredo sita est pzed' villa de H.) cujus tenor' fuit quod idem Constabular' caperet pzed' J. O. & R. B. ac duceret eos coram pzed' H. P. de dicta illicita venatione examinandos. Ac quod pzed' J. O. & R. B. postea scil' pzed' quinto die Septembris, Anno supradicto coram dicto Justiciario apud H. pzed' in Com' pzed' per pzedatum Constabularium virtute Warranti pzed' adducti fuerunt ac per eundem Justiciarium per discretionem suam de pzed' illicita venatione & de malefactoribus in ea parte abtunc & ibidem examinati existentes pzed' venationem voluntarie & felonice concelaverunt & quilibet eorum voluntarie & felonice concelabit contra pacem dict' Dom' Reg' Cozon' * Dignitatem suam necnon contra formam Statuti in hujusmodi casu edit' & p'obis'. &c.

Indictment.

IS the Verdict of a Jury charged to enquire into the Offence, &c.

This being in the Name of a Declaration for the King, ought to be certain, and must not be supplied by Implication or * Intendment; and if 'tis upon a Penal Statute, never recite it, * 4 Rep. because a small Misrecital makes it vicious. 3 Bulst. 212. 44 B.

In every Indictment these six Things are requisite; which see in the Margin.

Therefore *Misnomer* shall not be made good by any *alias* 1. The Name and

But where the Name of the Offender cannot be known, it may be *cujusdam ignoti*, because the King is intitled to the Forfeiture of the feiture; and if 'tis for Goods stolln, they may be carried into Party in another County, and so the true Owner not known. Dyer 99. dicted. Moor 466.

One of the Regicides was indicted by the Name of *Henry Martyn*, who said, That his Name was *Marten*, but being known by that Name, and being the same in Sound, though it differs in one Letter in the Spelling, the Indictment was held good.

Indictment for stealing a certain Piece of Linen *cujusdam* Cro. Eliz. A. N. and did not say, *De bonis & catallis ejusdem A. N.* this is 490. naught; for it must appear whose Goods they were at the Time of the Taking, if that can be known, because they may be let or pawned to another.

'Tis good by another Name, if the Party is known by both.

If there is a wrong Addition, or none at all; yet if the Party appear, that Fault is cured. Sid. 247.

Dyer 46 B. Indictment for murdering his Wife, setting forth, That she was *in pace Dei, &c. quousque* the Husband, *presat.* the Wife *de H. prad. in Com. prad.* Yeoman, &c. The Judges were in great Doubt, whether this Indictment should be quashed for want of an *Addition*, because if the Word *Yeoman* should relate to the last Antecedent, then it must refer to the Wife; but at last they considered, that, *ex vi termini*, this was not an Addition to a Woman, and therefore the Indictment good.

The Place of Abode is expressly required by the Statute of 1 H. 5. *cap.* and this Omission is not helped by the Statute of *Amendments*; for 'tis excepted out of that very Act.

If there are two Villis in one Parish, the Offender must be named of such a Vill, *in Parochia de H.* and not of the Parish generally.

2. The Year and Day.

As to this Matter, any Certainty by which the Year and Day may be known, is sufficient.

An Offence committed before *Midnight*, must be laid in the Indictment to be done the Day before; if after *Midnight*, then the Day after.

Striking one Day, and the Party dieth a Week following; the Day on which he dieth must be set forth.

So a Stroke 1 *Maii* at B. &c. and Death the Day following at R. & *sic felonice murdravit* at B. &c. it is not good; but if he had said, *Et sic modo & forma murdravit*, or *prad' secundo die Maii*, it had been otherwise. H. P. C. 207.

If the Fact be laid on a Day to come, or as done at several Times, the Indictment will be quashed.

But 'tis not necessary to set down the very Day in which the Offence was done; so that 'tis before the Offence the Jury ought to find the true Day, because the Forfeiture relates to the Day found by the Verdict, and not to the Day in the Indictment.

Neither is it necessary that the Jury should find the Party guilty at that very Day laid in the Indictment, but to find the Fact as in Truth it is proved; and it was done in Sir Henry Vane's Case. *Keb.* 16.

If after the Offence; yet if upon the Evidence the Jury thinks him guilty, they ought to find him so, because they are sworn *dicere veritatem.* 3 *Inst.* 230.

In Cases of Omission, *viz.* for not doing what we ought to do, 'tis not necessary to set down the Day and the Year.

3. Place.

If the County is named in the Margin, 'tis well enough; but if no Town is named where the Fact was done, or any Place, and in Truth there is no such to be found, the Indictment is void. H. 5. *cap.* 1. 18 H. 6. *cap.* 12.

Dyer 69.

The Defendant was outlawed upon an Indictment for Murder; which was reversed, because it did not set forth, That *ex malitia sua praconitata* he committed the Murder, nor any Place where

where it was done, but only where the Assault was; and that may be in one Place, and the Murder in another.

The Word *Hereford* was in the Margin, and the Indictment was, That *R. G. de R. in Com. Radnor, Generosus*, committed the Burglary at *S. in Com. prad.* and there being two Counties named before, it was incertain to which the Words *Com. prad.* should refer, and therefore quashed.

But the County must always be named in the Body of the Indictment, in Cases of Felony; but for any other Offence, 'tis sufficient in the Margin.

If a Stroke be in one County, and Death ensueth in another, the Indictment in the County where the Parry died is good, by the Statute of 2 & 3 Ed. 6. cap. 24.

'Tis sufficient to lay the Fact to be committed in *Parochia*, tho' that is an Ecclesiastical Division.

Treasons, Felonies, Robberies, Murder, &c. done on the Seas, or beyond Sea, may be tried in any Place appointed for that Purpose by the King's Commission.

A Robbery in *Middlesex*, and the Thief is taken with the Goods in *Suffex*, he may be indicted for the Felony there; but for the Robbery, it must be in *Middlesex*.

If the Indictment is for taking away Goods of the Church, you must say, *Bona Parochianorum in custodia Guardianorum Ecclesie* of the Person.

For Goods taken in the Life-time of a Man, who maketh an Executor, and dieth, it must be *de bonis Testatoris*; but if taken after his Death, then 'tis *Testatoris in custodia Executorum*.

The Inhabitants of a Parish, though no Person is particularly named, may be indicted for not repairing of an Highway.

If dead Things, to say, *Bona & catalla* generally, is not good; but *Bona & catalla*, and then expressing the Names and Certainty thereof, is good.

If living Things, you must not say, *Bona & catalla*, but *Equum* or *Oves*, as the Case is.

An Indictment for Things *fera natura*; as Hares, Partridges, &c. is not good, unless taken in a Park or Warren.

Then as to the Value, if the Indictment is of living Things, and likewise of such which are sold by Weight or Measure, it must be said * *pretii*, &c. and yet an Indictment for taking Fishes in a Pond was held good, without setting forth the Number or Value, against the Opinion of *Twisden*.

either Petty Larceny or Felony; and if the Indictment is in Trespass then either Petty Larceny or Felony; and if the Indictment is in Trespass then

Of dead Things not going by Weight or Measure, it must be said, *ad valentiam*.

Indictment.

Now the Reason why the Value is to be expressed in Felony, is, That it may appear whether 'tis Petty Larceny or not; and in Trespass, 'tis to aggravate the Offence.

6. Nature of the Offence, and with what Weapon. *Oppressor multorum Hominum*, without shewing in what Manner, *communis Forestallarius*, or *Latro*, or *Pacis Perturbator*, or that he is *mali Gestus*: These are all too general, and therefore not good.

But *communis Barreclator*, and concluding *contra formam Statuti*, is good, because 'tis an Offence made by a Statute. 2 Roll. Abr. 79.

For an Escape of a Person taken on Suspicion of Felony, you must set forth what Felony. H. P. C. 206.

† Cro. Eliz. 920. 4 Rep. 398. 2 Cro. 20. *contra*. In Treason it must be *proditorie*, and conclude *contra ligeantie sue debitum*; in Murder, *Murdravit*, which is *vocabulum artis*, and implies Malice, in Burglary, † *Burglariter*, and the Breaking must be of a Mansion-house; in Rape it must be *Rapuit*; in Felony, *Felonice*; for *cepit & furatus* is not sufficient, but *cepit & abduxit* is well enough.

But in all these Cases, and in Trespasses, the Indictment must be *vi & armis*, and it must conclude *contra pacem*.

2 Cro. 32. 3 Cro. 186. For in Forcible Entry, *vi & armis* is not requisite, because 'tis implied by *manu forti*; but you must conclude *contra pacem*.

If an Offence is created by a Statute, *contra formam Statuti in hujusmodi casu edit. & provis. &c.*

If Murder be laid to be committed with a Sword, you may give in Evidence any Weapon of the like Nature.

It will lie for a Conspiracy, without setting forth any Act done. 1 Lev. 62.

In all these Cases, if the Criminal pleads Not guilty, and his Plea is recorded, yet he may withdraw it, and confess the Indictment, and then the Entry is, that *relicta verificatione cognovit indictmentum*.

* Where after an Acquittal it will lie for the same Offence. * If the first Indictment was void for Insufficiency; as in *Vaux's Case*. 5 Rep.

If the Trial was in a wrong County.

† Where not. † If the Indictment is good, though it supposeth the same Felony done in another Year, though by another Name, if known by both, though the Process was erroneous.

Not void. For false *Latin*, or for false or incongruous Words; as *wiginti* for *viginti*; nor for the Omission of *Gladiis*, *Baculis*, & *cultellis*. 38 H. 8. cap. 8.

Void. Quashed for saying *ad generalem Session' pacis*, leaving out *Domini Regis*. 1 Lev. 175.

By insensible Words; as *Murdredum* for *Murdrum*, because 'tis neither *Latin*, nor a Word of Art.

By leaving out *contra formam Statuti*, where the Offence is created by an Act of Parliament; as *Riot*, &c.

It was *jurati* & *onerati dicunt*, omitting *super sacramenta sua*; Sid. 140. and though it cannot be intended otherwise than upon Oath, because the Word *jurati*, yet it was quashed.

Indictment was, *quod per sacramentum A. B.* and the rest of 2 Cro. 635. the Jury omitting *proborum* & *legalium hominum*, and quashed Palm. 283. for this Omission.

It shall never be quashed for false Latin, if by any Intend- Cro. Eliz. 108. ment it can be made good.

And yet where two Men were indicted for that *felonice cepit*, 5 Co. 121. this was held void. Cro. Eliz.

Indictments for any heinous Offence; as Perjury, &c. and even for Nuisances, are never quashed upon a Motion; but the 754. Indictment on Statutes. Defendant must plead or demur to it.

And if there are two Indictments against a Man for the same Offence, viz. One found by the Coroner's Inquest, and another by the Grand Jury; he may be tried on both at the same Time.

For an Offence at Common Law which is *contra pacem*, an Indictment will lie at Sessions; so for Fraud or Deceit; as for selling deceitful Goods, or by false Weights and Measures; and tho' there are particular Statutes relating to this Matter, yet that doth not alter the Case; for the Difference is this, That where an Offence at Common Law is made so likewise by any Statute, and a Punishment appointed by that Statute, yet the Offender is indictable, as it is an Offence at Common Law; but where a Statute creates a new Offence, and inflicts a Punishment that must be pursued, and no other.

'Tis not safe to recite the Statute *verbatim*, or the Beginning, Continuance or End thereof, because any Misrecital will make the Indictment void; but you must set forth the Substance thereof, and the Offence; for though you conclude *contra formam Statuti*, that will not help, because those Words relate only to Circumstances, and not any Substance. Dyer 3. 12, 363.

And therefore where one was indicted for Usury, in taking more than 6 l. for the Loan of 100 l. and concluded *contra formam Statuti*, tho' it appeared plainly to be corrupt; yet because it was not expressly set forth that it was by corrupt Lending, the Indictment was quashed. 11 Rep. 58.

If a Writ of Error is brought upon an Indictment, the De- 2 Cro. 61. 6. fendant must appear and put in Bail in Person; and therefore Sir William Read, who was 90 Years old, was brought in a Horse-Litter to the Hall, and upon Mens Shoulders to the Bar, to assign Errors.

Indictment upon a Penal Statute, where the King is to have the Forfeiture, must be brought within two Years after the Offence; but where a common Person is to have it, then within a Year, except it be otherwise directed by the Statute.

Indictment ; Process thereon.

Process
thereon.

After an Indictment is found by the Jury for any Trespass upon a Penal Statute, if the Defendant doth not come in the next Sessions, a *Venire facias* may be awarded in the Name of the King, directed to the Sheriff, and *Teste* by the Justice : This is only for an Appearance, the Form is thus ;

Venire facias.

Middl', ff. **G** Eoꝝ Dei Gratia, &c. Wic' Middlesex salutem. Precipimus tibi quod non omittas propter aliquam uoertatem in balliba tua quin venire facias J. O. de H. in Com' tuo, Labourer, coꝝam J. P. Bazonetto & G. G. Armigero, duobus Justiciariis nostris ad pacem in Com' pꝛed' conserband' necnon ad diuersas felonias transgressiones & alia malefacta in dicto Comitatu perpetrat' audiend' & terminand' assign' apud S. in Com' tuo * 30 die Julii proximo futur' ad respondend' nobis super quibusdam articulis super ipsum J. O. presentat' & habeas ibi tunc hoc Preceptum. Teste J. P. Baronet. apud S. 15 die Junii, &c.

* The Day
of the Sessions.

If the Sheriff return the Defendant summoned, and yet he doth not appear at the Return of the *Venire facias*, then you must sue forth a *Distingas* against him ; the Form of which is,

Middl' ff. **G** Eoꝝ Dei Gratia, &c. Wic. Middlesex, salutem. Precipimus tibi quod non omittas propter aliquam libertatem in balliba tua quin in eam ingrediaris & distingas J. O. de H. in Com' tuo, Yeoman, per omnia terras & tenementa sua & quod de exitibus eorum respondeas, &c. ita quod habeas Corpus ejus coꝝam custod' Pacis nostre, &c. † ad respondend', &c. Teste, &c.

† Ut prius.

And so a Distress Infinite till Appearance.

But if the Sheriff return *nihil habet*, then you must sue forth a *Capias* against the Defendant ; the Form whereof is,

Sussex, ff. **G** Eoꝝ &c. Wic' Sussex salutem. Precipimus tibi quod non omittas propter aliquam libertatem in balliba tua quin in eam ingrediaris & capias J. O. de H. in Com' tuo, Yeoman, si inuent' fuerit in balliba tua & eum salvo custodias, ita quod habeas Corpus ejus coꝝam custod' Pacis nostre necnon Justiciariis nostris ad diuersas felonias transgressiones & alia malefacta in eodem Com' tuo perpetrat' audiend'

audiend' & determinand' assign' apud L. in Com' tuo, die Jovis ¶ nono die Julii, p̄xim' futur' ad respondend' nobis de + The Day
diversis transgressionibus contemptis & delictis de quibus in of the Sess.
dictatus existit & habeas ibi tunc hoc b̄ve. Teste J. P. & G. G. ions.
apud L. &c.

If the Sheriff return *Non est inventus*, &c. then you must have an *Alias*, and so a *Pluries*, and then an *Exigent*; the Form of which is,

Middl' ff. **G** Eorg', &c. Vic' Middlesex salutem. Precipimus tibi quod exigi facias J. O. de H. in Com' tuo, Yeoman, quousq; secundum legem & consuetudinem Regni nostri Anglie utlagetur, si non comparuerit & si comparuerit tunc eum capias & salvo custod' ita quod habeas Corpus ejus coram Justiciariis Pacis nostre necnon ad diversas felonias transgression' & al' malefacta in eodem Com' tuo perpetrat' audiend' & terminand' assign' ad general' Session' Pacis Com' tui p̄x' post festum Sancti Thomæ Martyris p̄x' futur' tenend' ubicunque in eodem Com' teneri contigerit ad respondend' nobis de diversis transgressionibus contempt' & offens' de quibus ipse indictatus est & habeas ibi tunc hoc B̄ve. Teste Carolo Com' D. apud L. p̄mo die Maii, Anno Regni nostri p̄mo.

Return thereof.

AD quem diem R. F. Hil' Vic' Com' p̄ed' retorn' quod ad Com' suum tent' apud L. 4 die Julii, Anno Regni, &c. nunc infraſcript' A. B. p̄mo & sic ad quatuor alios Com' tunc p̄x' sequen' ibidem tent' p̄ed' A. B. quint' erat' fuit & non comparuit. Ideo utlagatus fuit.

This Outlawry must be certified into the *King's Bench*, because the Justices of Peace cannot award a *Capias utlagatum*.

But the Justices out of Sessions may award a *Superſedeas* to stay any of the Proceedings aforesaid, before the Outlawry is certified; the Form of which is,

Sussex, ff. **G** Eorg' &c. Vic' Sussex salutem. Quia J. O. de H. venit coram custodibus Pacis nostre & Justiciariis nostris ad diversas felonias transgressiones & alia malefacta in Com' tuo perpetrat' audiend' & terminand' assign' apud L. die Mercurii, &c. & in venit sufficien' securitatem pro comparantia sua ad p̄ximam General' Sessionem Pacis Com' S. p̄ed' Ideo tibi precipimus quod p̄fat' J. O. de ulterius exigend' & utlagand' capiend' seu in aliquo modo notand' occasione quarundam transgression' contempt' & al' offens' unde indictatus est omnio Superſedeas & qualiter hoc p̄ceptum nostrum

Traverse of Indictments.

Item fueris execut' constare facias 4 Justiciariis pzed' apud L. pzed' die Mercurii, &c. & habeas ibi tunc hoc breve. Teste T. P. & G. G. Ar' &c.

Traverse of Indictments, &c.

THis is the most solemn and ancient Way of trying the Fact: All Indictments may be traversed, that is, you may take Issue upon the Matter, or deny the chief Point in the Indictment.

This Traverse is to be tried by a Jury at the General Quarter-Sessions, except in Riots and Forcible Entries.

10 & 11 W.
cap. 23.

By the Statute of 11 W^{ill}. the Clerk of the Peace shall have no more than 2 s. for drawing an Indictment, upon Pain to forfeit 5 l. to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

Infant. See *Jeme-Cobert*, and Recognizance.

Information.

Several Laws have been made concerning Informers upon penal Statutes. Of these there are two Sorts.

First, The Attorney General, and the Clerk of the Crown-Office, who are *honorarii & inform. propter Officii necessitatem*, tho' involuntary.

The other are common Informers, who are likewise necessary, tho' my Lord Coke calls them *Turbidum Hominum genus*, and these are always voluntary.

Now as to these last Sort of Men, the Statutes do relate,

That every Informer shall exhibit his Information *in propria Persona*, or by Attorney.

† Which
may be in
Sessions.

That he shall not afterwards agree with the Offender without Leave of the Court; if he doth, and is † convicted of it, he must stand in the Pillory two Hours in a Market adjoining, and forfeit 10 l. to the King and Party grieved.

That if he delay or discontinue his Suit, or be nonsuited, or if the Verdict pass for the Defendant, the other shall pay Costs.

These Matters, by the Statute of 18 Eliz. cap. 5. are inquireable by the Justices in their Sessions.

1 And. 116.
4 Leon. 55.

The Preamble of this Statute is for redressing Disorders in *Common Informers*; and about seven Years after it was made, one *Knivett* brought an Information on a Penal Law, and there

was

Information.

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was a Verdict for the Defendant; and the Question was, Whether the Informer should pay Costs, because (it was said) he was not a *Common Informer*, that being the *first* Prosecution he made? But it was answered, That the Preamble of the Act did not make the Law, but the enacting Part, and that it was general against *all Informers* on Penal Statutes.

Nota, Where a Statute gives a Penalty to a *Stranger*, and he sues for it, he is a common Informer, and shall pay Costs upon the said Statute, 18 *Eliz.* but where the Penalty is given to the *Party grieved*, he is not a common Informer, nor liable to Costs.

By the Statute, 31 *Eliz. cap. 5.* * no Man is to be an Informer who is disabled by any Misdemeanour: He must not lay the Offence in any other County, but where it was really done, except in *Champerty*, concealing Customs, Extortion, buying Titles, Forestalling, Ingrossing, Regrating, where the Penalty exceeds 20 *l.* which may be laid in any County.

* This Statute doth extend to common Informers, and not to the Party grieved.
May 71.

But by the Statute † of 21 *Jac. cap. 4.* the Informer must make Oath, that the Offence was done in the County where the Information was exhibited (except in the Cases aforesaid) and within a Year before it was commenced, and if not proved to be done within the County, the Defendant shall be acquitted.

† Yet an Action of Debt upon a Penal Statute may be brought in B. R.

This Statute doth not extend to any Offence created since, so that Prosecutions on subsequent Penal Statutes are not restrained thereby.

But all Informations and popular Actions on Penal Statutes, made before that Act, must by Virtue thereof be brought in the proper County where the Fact was done. *H. 10. W. R. B.*

By 4 & 5 *Will. & Mar. 18.* one Justice of the Peace of the Place where the Cause of the Information doth arise, may take Recognizance of the Informer in the Penalty of 40 *l.* to the Defendant, to prosecute with Effect, and to abide by such Order as the Court shall direct.

This Recognizance he must deliver to the Master of the Crown-Office, or otherwise he is not to file any Information, or issue any Process for Trespasses, Batteries, or other Misdemeanors, without Motion in open Court.

There must be an Entry made in the Office, and a *Memo-randum* thereof filed in some publick Place, that every Person may see the Recognizance without Fee.

If the Defendant appear and plead, and if the Informer doth not within a Year after Issue joined procure a Trial, or if the Defendant hath a Verdict, or the Informer procure a *Non Prof.* the Court shall award Costs to the Defendant, unless the Judge doth certify on Record that there was Cause for the Information; and if the Costs are not paid within three Months after they are taxed, then the Defendant shall have the Benefit of his Recognizance.

Concerning Informations.

A Note

Inns and Inn-keepers.

A Note must be made of the Day, Month, and Year, of exhibiting the Information, and from that Time 'tis to be accounted a Record, and till then no Process shall be issued; and when that is done, the Name of the Prosecutor must be endorsed, and upon what Statute the Prosecution is made, and the Clerk doing contrary, forfeits 40 s. to the King and the Party. Godb. 158. 18 Eliz. cap. 5.

It must be exhibited within a Year after the Offence, but in Default of Prosecution, and where the King hath any Part, it may be commenced for that Part, two Years after the first Year is expir'd. 31 Eliz. cap. 5. 4 Mod. 129.

* Release,
or is Non-
suit.

If the Informer * die, the Attorney General may proceed, and if a *Non Prof.* be obtained, the Informer may go on.

Penal Laws are *stricti Juris*, and therefore the Statutes of *Jeofails* do not extend to them.

The Sessions cannot try an Information, unless they have a Jurisdiction by some Statute; but they are to proceed upon Indictments.

If two Informations are exhibited against the same Person for the same Offence, and in one Court at the same Term, they are both void, because there is no Priority of Time to attach the Right, more in one Informer than in the other; but if the Defendant plead, That one Information was exhibited such a Day in the Term, and that before that Time, (*viz.*) on such a Day in the same Term, another Information was exhibited, and Judgment obtained, &c. this is a good Plea in Bar. Heb. 128. 2 Lev. 141.

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he must set it forth, and demand it in the Information, or 'tis void. Heb. 245.

The *Venire* was *præceptum est*, and the Judgment *consideratum Raym. 192. est*, and left out *per Curiam*, 'tis not good. 1 Levinz. 123.

Where an Information is grounded on a Penal Statute, and it concludes, *contra formam Statuti prædicti*, if that Statute is misrecited, the Information is wrong; but if it is concluded *contra formam Statuti in hujusmodi casu editi & provis.* then it may be good; for the Court may take Notice of any good Act to punish the Offender.

Inns and Inn-keepers.

1 Salk. 388.

A Djudgeth that since Inn-keepers are bound to receive Guests, they may detain their Goods till Payment, &c. and that a Man is a Guest by leaving his Horse at an Inn, tho' he never lay in the House (which Holt, Chief Justice, doubted) because the Horse must be fed, by which the Inn-keeper receives

ceives Gain; but if it had been a Trunk, it might have been otherwise.

By the Statute 4 & 5 Will. cap. 13. 'tis enacted, That Constables, &c. may quarter Soldiers in *Inns, Livery-Stables, Ale-houses, Victualling-houses, Houses selling Brandy, Strong Waters, Cyder and Metheglin*, by Retail to be drank in their Houses; the Question was, Whether Houses kept for Lodgings in *Epsom*, and dressing Meat at so much *per Joint*, and selling small Beer to Lodgers, and finding Stable-room and Hay for their Horses, if this is an Inn or not? It was insisted, That this being a Common and Publick House kept for Gain, is within the equitable Construction of this Statute; but adjudged that it was not, because to quarter Soldiers on a Man against his Will, is contrary to the *Petition of Right*, 3 Car. 1. and therefore this Statute shall not be extended according to Equity, for 'tis not an *Inn*, because in such Places Men are to be entertain'd upon Access; but here it is upon a Contract; and an Inn-keeper is indictable if he refuse a Guest, but the Owner of an House is not, if he refuse a Lodger: Neither is it a *Livery Stable*, for there the Accomodation is for Horses only, but here for the Horse and the Owner: Neither is it an *Ale-house*, because Ale is not sold to all publickly.

Iron. See *Dool*, and Working thereon.
Inmates. See *Cottages*.

Inrollment.

B Argains and Sales of Lands may be enrolled by the Clerk of the Peace, if they lie in the same County; but a Justice of the Peace must join with him in taking the Inrollment; and this is by Virtue of the Statute 27 H. 8. cap. 16. 6 Rep. 62.

It must likewise be made within six Lunar Months after the Date of the Deed; but when a Year, or half a Year is mentioned in any Statute, then it shall be computed according to Calendar Months.

If the Land do not exceed the Value of 40 s. *per Ann.* then the Justice of Peace and the Clerk is to have each of them 1 s. if above that Value, then 2 s. 6 d. a-piece for their Fees.

Insolvent Debtors. See Statute 6 Geo. cap. 22.

Issues.

- Cro. 201.** **T**HE Forfeiture of Issues by Jury-men is to be levied by Record of Execution awarded by the Justices of the Peace, and this by Virtue of the Statute 27 *Eliz. cap. 7.*
 The Sheriff is to levy such Issues, and if he levieth more than he ought, then he forfeits five Marks to the King, and as much to the Party grieved.

Judgment in High Treason.

IN all Cases (excepting counterfeiting of Coin) the Offender shall be drawn to the Gallows, and there hanged by the Neck and cut down alive, his Entrails taken out and burnt, his Head cut off, his Body quarter'd, and his Head and Quarters hang'd up.

So it is for uttering such Money, knowing it to be so. *Cro. Car. 383.*

So it is for Clipping. *Dyer 230. B.*

But for *Counterfeiting* Money, 'tis to be drawn and hang'd, but not quarter'd.

In both Cases Judgment for a Woman is to be drawn and burnt.

- 1 Vent. 254.** Counterfeiting in this Case, is meant Counterfeiting by Coining, for that is esteemed an inferior Sort of Treason, in Respect to such which concerned the Person of the King; and if *Drawing and Hanging*, but without *Quartering*, is the Judgment for Coining, then by the same Reason it must be so for Clipping, for that seems a lesser Degree of the same Species of Treason.

In Petty Treason,

For a Man is to be drawn and hang'd.

For a Woman drawn and burnt.

In Felony,

The Offender is to be hang'd till dead, and it is commonly said, That this cannot be alter'd to Beheading.

In Petty Larceny,

To be whipt, and Forfeiture of Goods.

In

Judgment in High Treason.

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In Death by Chance-Medley,

There is no exprefs Judgment, but the Goods are forfeited.

In Death *se defendendo*,

The like as in Chance-Medley.

In Misprision of Treason.

Forfeiture of Lands during Life, of Goods, and perpetual Imprisonment.

But the Goods of these Offenders are not to be seized before an Indictment found, or remov'd before Attainder.

Peculiar Punishments are appointed by divers Statutes for several Offences, and in such Cases the Justices cannot mitigate, and therefore it is not warrantable to admit an Offender indicted on a Penal Law, to submit to a *Protestation* of Not Guilty.

As to what relates to Executions, 'tis usually said, That in Treason, the King may remit all other Parts of the Sentence, except cutting off the Head; but in Felonies, the Judgment must be executed in the Method prescrib'd by Law; and therefore, if in such Case the King should order a Criminal to be beheaded when the Judgment is to be hang'd, it would be Murder in the Sheriff and his Officers, and they must suffer for it without a Pardon.

But this is a Mistake; for in the Reign of *Ed. 6.* the Duke of *Somerſet* was attainted in Parliament of Felony, and yet was beheaded, which is no Part of the Sentence. And in the Reign of *Car. 1.* the Lord *Audley* was condemned likewise for Felony, and by the Opinion of all the Judges the Execution was changed from Hanging to Beheading.

Jurors and Juries.

A Liens.
Apothecaries. 6 & 7 W. 10 A. c. 14.
Attainted for any Crime.
Clergymen.
Conspirators.
Indicted.
Infants under fourteen Years.

Who may
not be a
Juror.

There

Jurors and Juries.

There was formerly a great Inconveniency in returning of Jurors, for the Sheriffs would summon as many as they pleas'd; which was often done in great Numbers, to the Oppression of the People.

This was remedied by the Statute of *W. 2. cap. 18.* by which they were ordered to summon in one Assize Twenty-four, and no more.

But it hath been adjudged, That this Statute extends only to Jurors returned in Civil Cases, and not for Trials of Criminals; for in such Cases the Sheriffs might be commanded by the Court to return as many as they please; and 'tis usual to return Sixty, because of the Challenges. *Kelynge 16.*

4 & 5 W. & M. cap. 24. Continued per 10 Annæ, for 11 Years. All Jurors upon Trials of *Issues* shall have in their own Name, or in Trust for them within the same County, 10 l. a Year, at least, above Reprizes, of Freehold or Copyhold Lands, or of Lands of Ancient Demesne, or in Rents in Fee-simple or Fee-tail, for their own, or some other Person's Life; and in *Wales* such Juror shall have 6 l. *per Ann.* and any returned of less Estate, it shall be good Cause of Challenge, and he shall be thereupon discharged, or upon his own Oath.

7 & 8 W. If there are not enough of the principal Panel, the Sheriff must return the *Tales* out of some other Panel of Jurors then attending; and if such *Tales-men* withdraw, the Judge may fine them.

Yorkshire being a large County, and many Persons therein qualified for Jurors; but that Service being forced on a few by the Corruption of the Sheriffs, therefore a Clause was made in the Statute above-mentioned, prohibiting Persons to serve on Juries more than once in four Years, except in the City and Town of *York* and *Hull*, and Counties of the said City and Town.

That at the Request of such Jurors, the Sheriff of *Yorkshire* shall register their Names at the End of every Assize and Sessions, and shall give them a Certificate of their Attendance and Service.

That the Panel returned for the Grand Inquest shall consist of Forty-eight Freeholders or Copyholders, and no more; each having 80 l. *per Ann.*

That at the Assizes there shall be ten Panels, and no more, of Petty Jurors; consisting of Twenty-four Jurors in each Panel, except where Special Jurors are directed.

That at the Sessions there shall be but forty Persons return'd to serve on the Grand Inquest, or any other Service.

Then there is a Clause, that the Inhabitants of *Westminster* shall not serve in any Jury at the Sessions held for *Middlesex*. If above 70 Years old and returned, he must serve if the Judge directs it; but he may sue the Sheriff upon *W. 2. cap. 38.*

Who may be a Juror. Any Freeholder or Copyholder who is the King's Liege Subject, and returned by the proper Officer.

In *Michaelmas Sessions*, the Constable shall return to the Justices a List of the Names and Abodes of Persons who are qualified to serve, between 21 and 70 Years of Age, a Duplicate of which List the Justices shall order the Clerk of the Peace to deliver to the Sheriff before *January* following.

This List must be entred into a Book, and kept amongst the Records of the Sessions, and none to be impanelled whose Name is not entred in the List. 7 & 8 *W. cap. 32.*

If the Sheriff, or his Bailiff, shall excuse any Person for Favour or Reward, or allow any Exemption to a Person under 70 Years of Age, he shall forfeit 20 *l.* to the Party grieved, or to him who shall sue for the same in any Court in *Westminster*.

And because the Constables, Headboroughs and Tithingmen, were negligent in returning such Lists; therefore by another Act, the Justices every Year at *Midsummer Sessions* shall issue out their Warrants, at least under the Hands of two of them, directed to the High Constables of each Hundred, requiring them to issue out their Precepts to their respective Constables, Headboroughs, &c. that they should meet the High Constable within fourteen Days after the Date of such Precept at some convenient Place within the Hundred, then and there to prepare a List as aforesaid; which List they must sign, and at the *Michaelmas Sessions* following deliver into Court. 3 & 4 *Annæ.*

The High Constable not issuing out such Precept to his Petty Constable or Headborough, forfeits 10 *l.*

The Petty Constable or Headborough not meeting according to the Precept, and failing to prepare a List, and to return it as aforesaid, forfeits 5 *l.*

Offenders to be prosecuted at the Assizes or Sessions; but there is no Direction how, or to whom the Forfeitures shall be applied, except it relates to a precedent Clause touching *Yorkshire*, which directs one Moiety to the King, and the other to the Informer.

And Note, This Act, and those of 4 & 5 *Will. & Mar.* and 7 & 8 *W. 3. cap. 30.* are to be publickly read in open Court at the Quarter-Sessions, held after 24 *June* yearly.

This Statute 4 & 5 *Will.* and *M.* being made but for three Years, was continued by 7 & 8 *W.* for seven Years; and by another Act 1 *Annæ* was farther continued for seven Years; was by another Act 10 *Annæ* continued for 11 Years from the Expiration thereof, and from thence to the End of the next Session of Parliament. 10 A. c. 14.

Must be summoned at least six Days before the Sessions, by shewing him a Warrant under the Seal of the Sheriff's Office. How and when to be

But if not at Home, then a Note left by the Officer at his Dwelling-house with any Person inhabiting there, is sufficient. summoned.

Jurors and Juries.

If summoned otherwise than aforesaid, the Sheriff forfeits 20 l. to the Party grieved, to be recovered in the Courts at Westminster.

None shall be returned in Yorkshire but once in four Years, the City of York and Town of Kingston upon Hull excepted.

Grand Inquest.

Must consist of 48 Freeholders or Copyholders, and no more, each having 80 l. per Ann.

There shall not be above forty Persons return'd at the Assizes or Sessions of the Peace for Yorkshire. 7 & 8 W. c. 32.

And by the Stat. 10 Anna cap. 14. the Word Sessions of the Peace in the former Act 7 & 8 W. shall be construed to extend to any Sessions of the Peace to be holden for any of the Ridings, and to Adjournments of such Sessions; but any Person of 150 l. per Ann. or more, serving as a Juror at such Sessions, shall not be exempted from serving as a Juror at Assizes in Yorkshire for four Years, or any other Term.

They may be more than twelve, and 'tis best to have an odd Number; and if twelve agree, 'tis conclusive to the Rest.

They ought not to have a Keeper, nor to be without Victuals; but may be adjourned to give their Verdict.

If they discover their Secrets, they may be fined; and if they make a favourable Presentment, they may be committed, and fined.

Moor. 302.

A Juror was indicted, for that he was *communis Publicator Secretorum Dom' Regis & sui ipsius & diversarum aliarum Personarum cum ipso impanellat'*, &c. & *contra Juramentum suum in ea parte prestit'*. It was objected, That this Offence did not lie in Community, no more than *communis Forestallator*, without shewing particularly in what; besides, it was not alledged, that he was sworn to keep the Secrets, nor that what he discovered concerning his Oath.

If one of the Number is outlawed, or returned at the Nomination of another, it makes the whole Panel void.

Justices of the Peace may make an Alteration in the Panel after it is returned, if they see Cause; and may remove a Juror after he is sworn. 3 H. 8. cap. 12.

Regularly they cannot enquire into any Thing but what arises in the County for which they are returned; and therefore if a Stroke be given in one County, and the Death happen in another, the Party could not be indicted where the Person died; but this is now remedied by the Statute of 2 & 3 Ed. 6. cap. 24.

So likewise the Law in criminal Cases is now alter'd by other Statutes; as in Confederacies, Felonies, Murders, Robberies and Treasons done on the Sea; the Offender shall be tried, where the King, by his Commission, shall appoint. 28 H. 8. cap. 15.

So in Treasons and Misprisions of Treasons done out of the Land, the Offenders shall be tried in the King's Bench by a Middle-

Middlesex Jury, or by the King's Commission in any County by a Jury of that County. 35 H. 8. cap. 2.

If the Grand Inquest conceal any Thing which they ought to present, the Justices of the Peace may impanel an Inquest to enquire of such Concealment, and fine them. 3 H. 7. cap. 1.

They may be punish'd by a Judgment in Attaint, if they give a false Verdict in any Court of Record, either in a Real or Personal Action, where the Debt or Damage is above 40 s. but no more Witnesses must be produced to the Jury which is to try the Attaint, than what gave Evidence to the first Jury; and if it should appear, that the first Jury had a plain and positive Proof before them, tho' false, yet the Jury which tries the Attaint is not to consider that Falsity, but what they would have done themselves if they had been on the first Jury. Dyer 53.

Any Person who is injured by a false Verdict, may have a Writ of Attaint against the Jury, unless where the King alone is a Party against a Subject, and the Jury find for him, tho' falsely, yet no Attaint lies in such Case; but 'tis otherwise where the Suit is, *Tam pro Domino Rege quam pro seipso*. 4 Leon. 46.

But this Way of punishing a Jury is seldom used, except where the Corruption is very apparent.

Cannot be fined for giving a Verdict contrary to Evidence, where an Attaint lies against them, nor indeed where it doth not lie; because it is impossible for the Judges to know the Fact as the Jury may; for the Judge knows it no otherwise but by the Evidence given in Court; but the Jury are supposed to know it by other Methods, viz. Jury how to be punish'd, and for what. March. 81. 3 Leon. 207.

By being returned of the Vicinage, by their own Personal Knowledge, by knowing the Witnesses to be Persons of no Credit.

So that if the Judge cannot have so much Evidence of the Fact as the Jury may, they may go against his Direction in Law; because where the Fact is not agreed, he cannot direct what is Law. *Vaugh.* 147.

If a Juryman will keep his Fellows without giving any Reason, or will withdraw from them, he may be committed and fined, because he is sworn well and truly to try the Issue; and therefore to be obstinate without Cause, or depart, is a Misdemeanour.

But if he differs in Judgment from the rest; tho' his Dissent be not as reasonable as the Opinion of those who agree, yet he cannot be fined, tho' he keep the rest for a Time from giving their Verdict.

For Misdemeanours they may be fined, but not barely for going against the Direction of the Court.

So in *Bayne's Case* where the Jury agreed of two Verdicts, intending to conceal one, if the Court should be satisfied with the other. *Cro. Eliz.* 778.

Jurozs and Juries.

In *Wharton's Case*, they were not fined for giving their Verdict against the Direction of the Court only; but the Judges were of Opinion, That some unlawful Practices had been us'd to procure that Verdict. *Yelo. 83. Noy.*

Jones 83. In *Fry and Hordy's Case* the Verdict was set aside, because it was given upon the *Fillip of a Six-pence*; if *Cross* for the Plaintiff, if *Pile* for the Defendant, and the Six-pence turning up *Cross*, they all agreed to find for the Plaintiff. This was a *Northumberland Fury*, and they were all orderd to attend next Term in Order to be fined.

Raim. 138. So in *Wagstaff's Case*, the Jury were fined and committed, Sid. 272. and upon a *Habeas Corpus* brought, they were not bailed; but it must be for some Misdemeanour, and not for refusing to find according to their Evidence, because they were not fined equally. *Hardres 409.*

So if they cast Lots whether to find for the one or the other, 'tis a Misdemeanour. 2 *Lew. 140, 203.*

In Cases of Life or Member, if they cannot agree of their Verdict at the Assizes, they must be carried the Circuit, till they do agree. 1 *Vent. 97.*

If the Jury at a *Sessions* cannot agree on their Verdict, they may, as in other Courts, be kept without Meat, Drink, Fire or Candles, till they agree.

1 Leon. 133. If they eat or drink before or after they are agreed of their Dyer 137. Verdict, if before they bring it in, they are to be fined; only with this Difference, That if they eat at their own Charge, the Verdict shall stand; but if at the Charge of the Party, it shall be set aside.

Moor 599. Some of them have been fined for having Figs and Pippins in their Pockets, tho' they did not eat them. 1 *Leon. 133.*

Cro. Eliz. If after they are gone from the Bar, one of the Jury calls 189. a Witness, who was sworn, and had given his Evidence in Court, and desires him to repeat it again, which he did; this is a Misdemeanour, and the Verdict shall be set aside.

2 Salk. 644. The Jury after they were gone from the Bar sent for an Act of *Common Council* given in Evidence; this was adjudg'd irregular, but not to set aside the Verdict; 'tis not like the *Lady Ive's Case*, where the Jury took a Map of one Side, which was not given in Evidence on either Side: 'Tis true this Act of *Common Council* was an Act of neither Side, but it was Evidence on both Sides; if a Jury eat at their own Charge, 'tis an Offence and finable, but the Verdict shall stand; but if at the Charge of either Side, and the Verdict is found accordingly, it shall be set aside.

2 Salk. 645. The Foreman of the Jury declared that the Plaintiff should never have a Verdict, let him produce what Evidence he would, and upon *Affidavit* made of this Matter, a new Trial was granted.

An Attorney was turned over the Bar, for giving Direction to the Sheriff what Persons he would have returned of a Jury. Challenge
It hath been held, That no Freehold was not a good Chal- of no Free-
leng to a Juror at Common Law. hold.

That if such Challenge was good, yet not in Treason; and if it should be admitted to be good in Treason, it must be where the Trial is in a County at large, and not in a City and County; and if in a City, yet not in London.

But there is no Resolution that this is a good Challenge at Common Law in any capital Matter 'tis a good Challenge in Civil Affairs, and no Reason can be shewed why not in Criminal.

'Tis no Objection to say, That the *Venire facias* mentioned no Freehold before the Statute 35 H. 8. cap. 6. for tho' this be true, yet it always expressed, That the Jurors should be *probi & legales homines*; which Words import they must be Freeholders, because *legales* implies, they must be qualified by Law; and *homines* who are meant, viz. Freeholders; for *Homines de Comitatu* are Freeholders of the County; and no other Men are considered in Point of Truff.

The Justices Precept to the Sheriff to return a Jury.

GEorg', &c. *Mic' Suffex Salutem. Precipimus tibi quod non omittas propter aliquam Libertatem Com' tui quin venire fac' coram Justiciariis nostris ad Pacem in Com' pzed' conserband' assign' apud L. in Com' pzed' 8 die Julii pzo' sequen' 24 probos & legales homines de Hundred' de L. ad audiend' & faciend' ea que ex parte nostra adtunc & ibidem illis fuerit injungend' & habeas tunc ibidem hoc Mandatum Teste T. P. Baronetto, apud L. tali die, &c.*

Justice of Peace.

IT is agreed by all Writers on this Subject, That there were *Conservators of the Peace* at Common Law, but there are several Opinions concerning the Original of Justices of the Peace.

Polydore Virgil tells us, That they began under *William* the Conqueror; and my Lord *Coke* says, That in *Easter Term*, 6 Ed. 1. *prima fuit institutio Justiciariorum pro Pace conservanda*, Mr. *Pryn* animadverting upon him, shews that H. 3. after the Agreement made between him and the Barons, did constitute Guardians *ad Pacem conservandam*. But the learned Sir *Henry Spelman* was of a contrary Opinion, viz. That they were made by Ed. 3. in the Beginning of his Reign, on Purpose to suppress
1 Ed. 3. c. 16.

Comotions which might happen upon the Dethroning *Ed. 2.* and being appointed by the King's Commission in every County to keep the Peace, they were therefore called *Custodes & Guardiani Pacis.*

Ed. 3. c. 2. The Number of these Magistrates at first was very uncertain, till a Parliament held *21 Ed. 3.* the Commons being charged to advise the King how the Peace of the Land might be better kept; their Advice was, That in every County six Persons should have Power by Commission to hear and determine Matters relating to the Peace; of which Number two should be of the best Quality, two Knights and two Men of the Law, and that they should sit four Times in one Year. *Cott. Abridg. 67, 86.*

Neither do I find that they had any judicial Authority at first, but afterwards they were enabled by particular Statutes to hear and determine Felonies and Trespasses.

36 Ed. 3. c. 12.

And for this Reason, two Years afterwards they were by another Statute called Justices of the Peace, which Name continues to this Day.

Number.

But in the Space of threescore Years their Number so increased, that *12 R. 2. cap. 10.* a Law was made, prohibiting that there should be more than six in every County, as at the Beginning of their Constitution; and this Number two Years afterward increased to eight.

They are now Judges of Record, and have a larger Power than the Conservators had; because they could not commit the Offenders for a Breach of the Peace; but the Justices may send Warrants to bring Delinquents before them to be examined, and may also commit where they see Cause.

This Law is not abrogated at this Day, but the Number of Justices is greatly increased in every County, which made Mr. *Lambard*, above one hundred Year since, complain of the excessive Number; and after him Sir *Henry Spelman* takes Notice, that there are above threescore in each County.

'Tis true, in *Wales* they were but eight in a County; they were confined to that Number by a Clause in the Statute of *34 & 35 H. 8.* but by a late Act of *5 Will. & Mar.* that Clause is repealed.

'Tis this which made a late Author liken them to the Order of St. *Michael* in *France*, which at the Institution was desired by Men of the first Quality, there being only Thirty-six in Number, but in a few Years so increased, that it was despised by Men of Honour, and bestowed only upon mean Persons.

So this Court of Justices of Peace, which was once, as my Lord *Coke* observes, such a Form of subordinate Government for the Quiet of the Realm, that if duly executed, no Part of the Christian World had the like, hath been composed of such an unsuitable Mixture of Men, that it is become a Subject in Plays, and a Jest in Comedies.

There.

Therefore this Author would have the the Number reduced to the old Standard, *viz.* That in each County there should be eight Honorary Justices constituted of Men of the best Quality therein, who should not be obliged constantly to attend the Service any farther than their Zeal for Justice and Love for their Country, shall incline them; and eight acting Justices, who should be fit for Business, who should constantly apply themselves to this Attendance, be entitled to a Reward for their Pains, and be subject to Penalties upon any Neglect, without a reasonable Excuse; and that without five, no Sessions should be held.

Among the Petitions made at a Parliament held at York, 8 Ed. 3. this was one, (*viz.*) That all Justices of the Peace were to have certain Fees for their Attendance; the Petition was again renewed 36 Ed. 3. and the King answered, He would provide therefore; but what that Fee was, doth not appear. *Cott. Abr. fol. 15, 93. 12 R. 2. c. 10. 19 H. 7. 5 Eliz. c. 4.* *Hill. 12. R. 2.* it was enacted, That they should have 4*s.* *per Diem*, for every Day they sate in Quarter-Sessions; and since, by particular Statutes, they are to have also Part of the Forfeitures upon Conviction of Offenders against these Laws; and by the Statute of Labourers, they are to have 5*s.* *per Diem* for every Day they shall sit in Execution of that Act above three Days.

And such Care was then taken to reward those Magistrates, that it was provided by a Statute, *Anno 14 R. 2.* that the Names of the Justices, and the Days of their Sitting, should be written in the Indentures of Estreats of every Sessions, one Part whereof was to remain with the Sheriff, that he might know to whom the Wages should be paid; and the other with the Barons of the *Exchequer*, that the Sheriff might have Allowance made, &c. in passing his Accounts; and if he neglected or refused to pay the Wages allowed by Law, an Action of Debt would lie against him.

Their Qualifications are described by several Statutes, *viz.*

They must be Men of the best Reputation, the most prevalent Men in the County, as they were formerly called, together with some Lawyers; they must be substantial Persons, dwelling also in the County; they must be Men of good Governance, and must not be Steward to any Lord, or desire this Office; and they are not qualified unless they have 40*l.* *per Annum*, except Men of the Law. *How qualified. 18 Ed. 3. 2. 34 Ed. 3. 1. 2 H. 5. 4. 18 H. 6. 11. 12 R. 2. 10.*

And therefore an Indictment was brought against one, because he acted as a Justice of Peace, not having 40*l.* *per Annum*, *contra Pacem*, &c. but the Indictment was quashed, because the Time of his acting was not laid, &c. for he might have 40*l.* *per Ann.* then, though not afterwards. *Roll. Rep. 2 Part 247.* *2 Cro. 643. An-Castle's Case.*

Of his
Power in
General.

In some Cases 'tis Ministerial, (*viz.*) On a *Supplicavit* out of B. R. for taking Surety of the Peace, on the Statute of *Northampton* for a forcible Entry, and on a *Certiorari*.

But in most other Cases relating to his Office, he is a Judge of Record, for none but such can take a Recognizance for the Peace.

In an Action for false Imprisonment, the Defendant justified, for that the *Lord Mayor of London* is a *Justice of Peace*, and that the Defendant is a *Serjeant at Mace*, according to the Custom of *London*; and that *W. R. Lord Mayor* commanded him to arrest the Plaintiff, which he did, &c. Adjudged that a Justice of Peace cannot command a Man to arrest another in his Absence without a Warrant, and that the *Serjeant at Mace* is not an Officer to the *Lord Mayor*, as he is a Justice of the Peace, but the Constable. 1 *Brownlow* 204. *Woody's Case*.

*And there-
fore had
Power to
inquire of
Murder, be-
cause 'tis
Felony.
Dyer 69.

By the Statute of 18 *Ed. 3. cap. 2.* he hath Power to hear and determine * *Felonies* and *Trespases*, and to inflict Punishments. He hath the like Power by 43 *Ed. 3. cap. 1.* and likewise by *R. 2. cap. 10.* he hath Power to proceed to the Deliverance of Thieves and Felons.

Now tho' these Statutes do enlarge their Power, yet because by a subsequent Law, (*viz.* 1 & 2 *Phil. & Mar. cap. 13.*) they are to certify the Examinations in Homicide and Felony to the Justices of Gaol-delivery, therefore the Sessions do not proceed to determine great Felonies; but for Petty-Larceny, and other small Felonies, they usually try Offenders, or they may proceed in any Case where a Felony is by any Statute limited to be heard before them.

And generally in all Cases they may take the Examinations, and commit the Offenders, and bind over the Prosecutors to the Assizes, and certify their Proceedings, it being incident to the Office of a Justice of the Peace to commit, as the *Conservators* of the Peace did at Common Law, for they have no Authority to do it by any express Words in their Commission, and it was the Opinion of *Hale Ch. Justice*, that if he directs his Warrant to a private Person, he may execute it.

1 Salk. 347.

The Defendant was committed by a Warrant of a Justice for being a *notorious Owlter and Smugler*, and was afterwards indicted for this Fact, and being still in Custody, he brought an *Habeas Corpus*, and moved to be discharged.

(1.) For that he had been in Gaol two Times since the Indictment was found, and not brought to his Trial.

(2.) The Charge in the Warrant of Commitment was very loose, (*viz.*) *For being a notorious Owlter and Smugler*, which is not a sufficient Charge to deprive a Man of his Liberty, especially in a criminal Cause where the utmost Certainty is required.

Adjudged that the Defendant ought to be tried within two Terms after his Commitment, otherwise he must be discharged according to the *Habeas Corpus Act*.

But Justices of Peace must take Care that they have such an Information of the Fact as may be sufficient to support a Warrant of Commitment, but it need not be set forth in the Warrant it self, because so much Certainty is not requir'd in Warrants as in Writs and Pleadings, which are always on Record. *Mich. 1721. The King versus Walter.*

The Defendants were indicted for not producing the Parish Mod. Case Books before Justices of Peace, who were appointed by the ⁸⁷. Sessions to examine and make Orders thereon, and to commit for disobeying such Orders, but the Indictment was quash'd, for tho' the Sessions may refer the Examination of the Fact to a certain Number of Justices, yet they cannot delegate the Power of making Orders.

Where a new Commission is made to Justices of Peace, out Moor 187. of which some of the Justices in the Old Commission were omitted, yet they have Authority to act, and what they do is lawful, till the next Sessions at which the new Commission is publish'd.

Where he hath a Jurisdiction, his Warrant is not to be disputed by any Constable, who may be indicted for not executing it. ^{2 Rol. Rep. 78.}

In some Cases, as in *Force, Riots, Presentments of Highways*, his single Testimony is of greater Authority than an Indictment of a Jury.

But in his own Case he is not Judge, and ought not to execute his Office, unless he is assaulted, and then he may commit the Offender; he may likewise record a forcible Entry upon his own Possession.

He shall not be punish'd for any Thing done by him in Sessions as a Judge.

When he justifieth the Fact done by him as a Justice of Peace, he need not set forth his Commission, because he is a Judge of Record, and his Commission remaineth with the *Custos Rotulorum*.

If any Man abuseth him, an Indictment will lie against the Offender.

That is, if the Abuse be in any Thing relating to his Office; ^{Sid. 144.} as where an Order was affirmed upon an Appeal, and the Party in Anger said, *If I cannot have Justice here, I will have it elsewhere*; he was indicted for his Contempt, and fin'd by the Justices ^{5 l.} and committed for Non-payment; and this was held lawful: 'Tis true, Justice *Twisden* was of a contrary Opinion, viz. That the Words were not spoken in Contempt, but by way of Appeal to another Court, and did not accuse the Sessions of Injustice; but this is a strained Construction of a plain Sentence.

And

And as they are favoured by the Law in the Execution of their Office, so they are punish'd for any Irregularities.

Sid. 192.

As for Instance : An Information was brought against a Justice of Peace for compounding Recognizances, and not returning them to the Sessions ; and for taking 20 s. for every unlicens'd Ale-house, and converting it to his own Use ; he was fined 1000 Marks, and imprison'd during the King's Pleasure, was to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Assizes.

A Justice of Peace sent a Servant to the House of Correction on Complaint of the Master, for that he was saucy, and gave his Horses too much Corn ; and this being held not to be a sufficient Cause for the Justice to send the Servant thither, an Information was filed against him by Leave of the Court. *Pas. 1722. The King versus Okey.*

Noy 103.

But he may persuade an Agreement between the Parties for small Trespasses, but not where the King is to have a Fine.

1 Leon. 137.

Cr. Eliz.

130.

He may send his Warrant to apprehend any Person accus'd of Felony, though the Accusation should be false, but not unless accus'd.

One Justice, &c. cannot commit another for a Breach of the Peace ; the Sessions may.

They cannot hold Cognizance of Pleas upon Penal Statutes without an expresse Power given to them by those Acts ; and without such Authority, the Indictment, if taken, will be void.

9 Geo. c. 7.

If a Justice for any County at large, shall dwell in a City that is a County of it self, and within the County at large, for which he shall be appointed a Justice, though not within the same County, he may grant Warrants, take Examinations, &c. at his own Dwelling-house (though it be out of the County where he is authorised to act as a Justice ; and in some City or Precinct adjoining, that is a County of it self ; and such Acts of the Justice, and of the Peace Officers in Obedience to any such Warrant shall be good in Law, though it happen to be out of his Limits.

Provided, That nothing in this Act shall give Justices of the County Power to hold their Quarter-Sessions in Cities that are Counties of themselves ; nor Peace Officers of the County at large to intermedle in any Matters arising within such Cities or Towns.

How his

Power is

determin'd.

Dalton 12.

234.

By the Death of the King, by a Discharge under the great Seal, by a *Supersedeas*, by granting a new Commission, by Accession of another Office, as being made Sheriff or Coroner.

I shall conclude this Title with mentioning in what Cases Justices of Peace have been fin'd and punish'd.

Bail.

{ Bailing one not bailable, and refusing to bail
where bailable, fin'd and to pay double to the
Prisoner. 3 Ed. 1. 15. 23 H. 6. 10.

Cor.

Correction-house.	{ For neglecting to take Order about House of Correction, fined 5 l. towards the building it. 1 Jac. 4.
Forcible Entry.	{ For not executing the Statutes of Forcible Entry, fined 10 l.
Indictment.	{ Embezilling, wilfully razing it, changing a Trespass into a Felony, fined and imprisoned.
Juror.	—Threatning a Jury-Man to present any Thing.
Oath.	—Executing his Office before he took it.
Peace.	{ Refusing to take Surety of the Peace when tender'd.
Riots.	{ For not executing the Statutes against Riots, fined 100 l.
Records.	—Embezilling or razing them.

Justices of Peace of the County of *Anglesea* may adjourn the Quarter-Sessions for the said County, from Time to Time, to any Part of the County, for the Ease and Benefit of those who are oblig'd to take the Oaths to the King, but for no other Purpose. *Stat. 1 Geo. c. 25.*

Beels. See **Coals.**

Larceny Petty.

IT is a Felonious Taking and Carrying away the personal Goods from another, not from his Person, nor out of his House, and not exceeding the Value of 12 d.

In this Definition, these Things are to be consider'd :

1. Who may be guilty of this Offence.
2. What shall be accounted a Felonious Taking, and where.
3. What shall be a Carrying away.
4. What are the personal Goods of another, and what not.
5. The Value.

As to the First, Infants under fourteen, and married Women, may be guilty, &c. but if a *Feme-Cover*t taketh the Goods of the Husband, and delivereth them to another, 'tis not Felony in the Receiver, Who may be guilty.

'Tis

'Tis likewise an Excuse to her, if she commit Felony by the Command of her Husband, if both are in the same Felonious Act ; but 'tis no Excuse in a Servant by the Order of his Master.

What is a
felonious
Taking,
&c.

There must be an actual Taking, and therefore the Indictment is always *quod Felonice cepit & asportavit* or *abduxit*, for if it be *quod abduxit* only, 'tis naught ; and therefore if Goods are found, and afterwards converted *animo furandi*, 'tis not Felony.

If a Man hath the Possession of Goods by Delivery, as a Carrier, who embezzles them, 'tis no Felony, unless the Privy be determin'd ; that is, if by Agreement the Goods were to be carried to such a Place, which he doth not ; or if they are brought thither, and afterwards the Carrier takes them, *animo furandi*.

Raym. 275.

But in some Cases, though the Party hath the Goods by Delivery, yet 'tis Felony to go away with them ; as if a Shopkeeper delivers Goods to a Person pretending to buy them, and he runneth away with them, 'tis Felony ; for the Goods were not properly out of the Possession of the Owner by his Delivery, but by completing the Contract which was then begun ; and the Running away shews the Intention of the Party, by coming into the Shop (*viz.*) to get the Goods into his Possession, *animo furandi*.

But Felony may be committed by a Person who hath the Charge or Use of a Thing, as a Shepherd of his Sheep ; or a Guest of Plate brought for his Use in an Inn.

It may be committed by making Use of the *Process* of the Law to obtain Goods, *viz.* By obtaining a *Replevin* where a Man hath no Property, and by that Means get a Horse deliver'd to him, this is a felonious Taking ; so by getting Goods out of an House upon an Ejectment, where he hath no Title. *Sid.* 254.

What is a
Carrying
away.

A Guest removes Goods out of his Chamber, and is taken before he gets out of the Inn ; or taking a Horse with an Intent to steal, but is apprehended before he can get out of the Ground where he was departing ; but riding away with a Horse lent is not *Larceny*. *Dalt.* 367.

What are
the perso-
nal Goods.

A Man who hath a Property only *pro tempore*, as a Bailiff, if Goods are taken away from him, 'tis Felony.

Stealing a Bond is Felony, because 'tis a Thing in Action.

Taking Fish in a Trunk or Pond is Felony, because they are depriv'd in these Places of their natural Liberty ; so Taking Swans kept in a Pond or private River.

Things which have been *fera Natura*, if made tame, are personal Goods ; as Conies, Deer, Partridges, Pheasants, 'tis Felony to steal them, knowing them to be tame.

So where a Man hath a Property, *ratione impotentia*, in Things which are wild in their Nature ; as young Hawks, or Pigeons in their Nests, 'tis Felony to steal them.

So 'tis to take Things which are *domita Natura*; as Ducks, Hens, Turkeys, &c. Horses, Colts, &c.

To steal the Shroud of a Person buried is Felony; for it is *bona Executorum*: *Quare*.

Wrecks, Waifs, and Estrays before Seizure; Fish in a River, Conies in a Warren; for a Man hath no Property in them but *ratione loci*.

Corn or Grass growing, Apples growing, taking Lead off a Church.

Things of a base Nature, as Dogs, Foxes, Monkeys, Parrots, Ferrets; these and such like are not personal Goods, and so no Felony to take them.

If the Indictment be for taking Goods to the Value of 12 *d.* What not and the Jury find only to the Value of 10 *d.* 'tis Petty Larceny. the Value of 12 *d.* or under.

If several small Matters are taken from the same Person at several Times, and all amounting to more than 12 *d.* they may be put into one Indictment; and the Offender, being found guilty, shall have Judgment of Death.

The Judgment in this Offence is to be whipp'd, and forfeits his Goods.

A Wife stealing by Compulsion of her Husband; otherwise, Who are if not constrain'd; but if she commit Murder by her Husband's not Felons. Consent, 'tis Felony.

They steal Goods together, 'tis Felony in the Husband alone; but if she steal her Husband's Goods, or receive him, being a Felon, she is not guilty as a Felon in the one Case, or as Accessary in the other.

Leather.

THE Statute which chiefly concerns the Ordering of Leather, was made * *Anno 1 Jac. cap. 22.* which may be divided into these Particulars: * Enforced by 9 Anne, c. 71.

Concerning	{	Bark,	Shoemaker,
		Hides,	Searchers, &c.
		Tanner,	Sealers of Leather.
		Currier,	Triers.
		Leather tanned,	Forfeitures.
		Leather curried,	Exportation.

This must not be engrossed, the Forfeiture is double the Value.

Oak-Trees, fit for Barking when the Bark is worth 2 *s.* per Cart-Load, must not be sold but between the first of *April* and the last of *June*, except for necessary Repairs of Houses, Mills or Ships; Forfeiture, *viz.* the Trees or double the Value.

Gashed

Hides.

Gashed by the Butcher, or by the Currier in shaving, Forfeiture to the Party grieved twice as much as the Loss.

Note, This is alter'd in some Particulars by 9 *Anna*, c. 11.

Spoiled or impaired, forfeits 6 s. 8 d. and the Value of the Hide or Skin.

Gashed by the Tanner or Butcher, forfeits 20 d. *per* Hide.

Water'd, except in *June*, *July* or *August*, forfeits 3 s. 4 d. *per* Hide.

Put to Sale, being putrified, like Forfeiture.

Must not be bought rough in the Hair, except by Tanners, (other than Salt Hides, for the Use of Ships) forfeits the Hides, or the just Value.

Tanner.

Tanned Leather must not be bought but in Fairs and Markets, forfeits 6 s. 8 d. *per* Hide. *Vide plus ibid.* 1 *Fac.* 1. *cap.* 22.

Must serve seven Years Apprentice, or be a hired Servant to the Trade, or must be a Widow; or Children of a Tanner, having a Tan-fat left them, and been brought up in the Trade for 4 Years: Forfeiture is all the Leather tanned, or Value thereof.

He must not over-lime Hides, or use any Thing but the Bark of Ash or Oak, Culver-dung or Hen-dung, Lime, Malt, Meal, Tapwort: Forfeiture is every Hide otherwise tanned and put to Sale, or the Value thereof.

Suffering Hides to be frozen, or to be parched with Fire or Sun, like Forfeiture.

Tanning rotten Hides, not continuing Sole-Leather twelve Months in the Woozes, and Upper-Leather nine Months; or negligent working Hides in Wooze, and not renewing and strengthening them, forfeits every Hide so tanned and put to Sale, or full Value thereof.

Raising Hides for Sole-Leather by any Mixtures, forfeits the same.

Must not hasten the Tanning by unkind Heats with hot Wooze, forfeits 10 l. and stand in the Pillory three Days in next Market-Town.

Using the Trade of a Shoemaker, Currier, Butcher, or any Artificer cutting or working Leather, loseth the Hides and Skins tanned.

Currier.

Must not curry a Hide or Skin which is not well tanned, and dried in his own House, situate in some Market or Corporate Town, and not elsewhere.

Must not use the Trade of a Tanner, Butcher or Shoemaker, or any other Artificer, who uses cutting Leather, forfeits for every Hide 6 s. and 8 d.

Refusing to curry Leather within eight Days in Summer, and sixteen Days in Winter, after he shall or may take it in Hand, forfeits for every Hide not curried 10 s.

Warden of the Company, or Officer by him appointed, shall within one Day after Request, search and seal curried Leather, for which the Currier is to pay 1 d. *per* Dicker; the same for

fix Dozen of Calves-Skins; he forfeits for every Hide not sealed and searched 6 s. 8 d.

A Currier in *London*, not currying Leather well, forfeits the Value; a Currier buying tanned Leather, and currying it, and selling it to Shoemakers not cut out and made into Wares, is punishable. 1 Cro. 425.

Being unwrought, shall not be bought but by those who Leather make it into Wares; but Artificers may buy every *Mon-tanned*. day in *Leadenhall* Market, being first searched, sealed and registred.

An Information was brought upon this Paragraph of the *Jones* 463. Statute, against a Currier for buying and selling tanned Leather not made into Wares; and it was found, that he bought Hides which were tanned, and that he shaved, coloured and glazed the Leather, and sold it; and this was held to be within the Statue, because this Operation was not a Making it into Wares.

Red and unwrought shall not be sold but in Markets, &c. unless sealed and searched in some Market before, nor shall any Leather be exposed to Sale before sealed and searched: Forfeiture 6 s. 8 d. per Hide, and for a Dozen of Sheep or Calves Skins 3 s. 4 d. besides the Hides and Skins, or full Value.

Not sufficiently dried and tanned and put to Sale, forfeits the Whole.

Red Leather brought within the Jurisdiction of *London*, must be carried to *Leadenhall* and there searched; being sold before it is searched, forfeits the same, or the Value thereof.

Red and unwrought must not be bought and sold before it is registred, forfeits the Value.

Leather shall not be put to be curried by any Artificer in *Leather London*, or three Miles thereof, but to some Person free of the curried. Company of Curriers in *London*, forfeits the same or Value thereof.

Curried Leather must be searched and sealed within the Jurisdiction of *London*, and three Miles thereof, before it is used, forfeits 6 s. 8 d. per Hide, besides the Value of each Hide.

Must make Boots and Shoes of good Leather, sew them well, Shoemaker and not sell on *Sundays*, forfeits for every Offence 3 s. 4 d. and the full Value of the Wares sold.

Masters and Wardens of { Curriers.
Girdlers.
Sadlers.
Shoemakers.

Searchers
and Sealers.

within the Jurisdiction of *London*, must once a Quarter search and view all Wares made by Persons of their respective Professions, and which are made of tanned Leather, or they forfeit

feit 40 s. *per* Year for every Year's Default; to be divided between the King and Prosecutor.

They may seize insufficient Wares until tried.

Mayor and Aldermen of *London* must every Year chuse and swear eight expert Men, out of some of those four Companies, to be Searchers and Sealers of tanned Leather there, or forfeit 40 s. *per An.* to be employed as above-written.

Searchers, &c. refusing to do their Office, or to allow Wares which are really good, forfeit 40 s.

Exacting more than due Fees, forfeit 20 s.

Lawfully chosen, and refusing the Office, forfeit 10 l.

Opposing Searchers and Sealers in Execution of their Office, forfeit 5 l.

Information against a Person not being a Tanner, for buying raw Hides, and selling them again, not tanned.

Sussex, ff. **M**emozandū quod, &c. venit T. H. &c. & dat Curie hic intelligi & informari quod quidem R. de L. in Com' pzed' Sutoz 17 die Maii, ult' pterit' ante exhibitionem huius informationis apud L. pzed' in Com' pzed' emebat de diversis Personis quarum nomina pzetat' T. H. qui tam, &c. incognita sunt viginti pelles hirsutas, (Angl' rough Hides) pzetii cuiuslibet pellis inde 6 s. 8 d. pzetat' R. R. ad tunc non existen' coziatoz vel Persona que licite potuit pelles pō deplere que quidem pelles non fuer' facte pzo usu necessario navium contra formam Statut' in huiusmodi casu edit' & pzoibis. per qd' pzed' R. R. forisfecit, &c. legalis monete, viz. balozem pō pellium unde pō T. H. tam p eodem Dom' Reg' quam p seipso pet' advisamentum Curie in premillis quodque forisfactura pō in tres equales partes dividatur juxta formam Statut' pzed' ad quod ipse idem T. qui tam, &c. unam partem inde habere valeat juxta formam Statut' pzed'.

Information against one for buying tanned Leather, and not making it into Wares.

Sussex, ff. **M**emozandū quod, &c. venit T. H. qui tam, &c. & dat Curie hic intelligi & informari qd' quidam T. P. de L. in Com' pzed' Sutoz 17 die Maii, &c. apud L. pzed' in Com' pzed' emebat de quodam T. R. decem terga coziata, (Anglice, Backs of tanned Leather) pzetii cuiuslibet tergi inde 5 s. & quod pzed' T. P. eodem 17 die Maii, apud L. pō in Com' pō exposuit, (Anglice, did put away) pzed' terga coziata non operat' & conversa in mercimon' facta (Anglice, into

made into Wares) contra formam Statut' in hujusmodi casu edit' & probil. per quod (pout antea.)

Information against a Tanner, for exposing tanned Leather red and unwrought to Sale, not in a Fair or Market.

Suffex, ff. **M**emozans quod, &c. venit T. H. qui tam, &c. & dat' Curie hic intelligi & informari quod R. R. de L. in Com' p'd' coriatoz primo die Junii, ult' preterit' & diversis al' diebus ante exhibitionem hujus informationis apud L. pzed' in Com' p'd' venditioni exposuit & vendi & exponi causabit cuidam G. E. de H. &c. & diversis al' Personis pzed' fat' T. qui tam, &c. adhuc incognit' quinque pelles coriataz rubras & melaborat' (Anglice, unwrought) que quidem pelles non fuer' per p'at' R. R. adtunc & ibidem venditioni exposit' in aliquo aperto nundino (Anglice, Fair or Market) nec ante tunc fuer' scrutat' & sigillat' in aliquo aperto nundino (Anglice, Fair or Market) contra formam Statut' in hujusmodi casu edit', & probil. unde pzed' T. qui tam, &c. per advisament' Curie in p'missis, &c.

They must register tanned Leather sold in Markets, &c. with the Prices thereof, and the Names of Buyer and Seller, taking of each 2 d. for ten Hides, and 2 d. for every six Dozen of Calves or Sheep Skins.

These are six Persons in London, appointed by the Lord Triers, Mayor, &c. and in other Places by the chief Officer upon Oath, within fifteen Days after Seizure, &c.

Persons not appointing, and Triers neglecting their Duties, forfeit 5 l. for every Default.

Four of the Triers in London shall be removed every Year, and others put in their Room; and none shall be in that Office above two Years, and afterwards shall not be chosen again within three Years; Forfeiture for every Month otherwise continuing in the Office 10 l.

By this Act Exportation was prohibited; but by 20 Car. 2. Exportation cap. 5. it was made lawful, paying for every Hundred Weight on 12 d. Which Act was revived by 1 W. & M.

The Money forfeited by 1 Fac. must be divided into three Parts. viz. between the King, Prosecutor and Corporation or Lord of Liberty. Forfeitures how to be divided.

The Value of the Wares, if within the Jurisdiction of London, into three Parts, viz. between the Seisor, Chamber of London, and Poor; and in all other Places, between the Seisor, Head-Officer, and to charitable Uses.

Justices of Peace have Power to hear and determine Offences against that Act.

9 A. c. 11. By a subsequent Act 9 *Anna*, cap. 11. certain Duties are laid on Leather, but the Act of 1 *Jac.* is enforced and enjoined to be observed in every Thing but what is altered; and this Act relates.

- (1.) To raw Hides.
- (2.) To Dressers of Hides and Makers of Vellum.
- (3.) To the Officers who are to collect the Duty.
- (4.) To the Justices of Peace.

Raw Hide. First, As to raw Hides and Calves-Skins, they must not be gashed under Penalty of 2 s. 6 d. *per* Hide, and 1 s. *per* Calf-Skin, one Moiety to the Poor, the other to the Seisor or Informer.

Shaving such Hides or Skins, by which they are impaired or the Duty diminished, forfeits them; one Moiety to the King, the other to the Informer.

Dressers of Hides, and Makers of Vellum. Must give Notice in Writing to a proper Officer, of their Names and Places of Abode, of their Tan-houses, Ware-houses, Yards, Mills, Pits, Fats, &c. or the Prices, &c. Forfeiture is 50 l. one Third to the King, and two Thirds to the Informer.

Must likewise give Notice of their Place of drying or keeping Hides, and when they take them out of the Mill, must not remove them from the Place where dried, before Entry with the Officer, and marked.

Using any private Tan-yard, and not giving timely Notice to the Officer, of taking Hides out of the Wooze, not making Entries, removing all or any Part, hiding or concealing, forfeits 20 l. and the Hides; one Moiety to the King the other to the Informer.

Not paying the Duties, forfeits double Duty; delivering or carrying out any Hides before the Duty paid, forfeits double Value of the Hides, to be divided as before.

Tanner not keeping just Scales and Weights, or not permitting Hides to be weighed, or neglecting to bring them to the Scale, or to assist in weighing, or removing them before the Duties charged and the Skins marked, not accounting once in three Months, forfeits 50 l. to be divided in like Manner.

Not giving an Account of his Stock, like Forfeiture, besides the Stock concealed.

Collar-makers, Bridle-cutters, Glovers and others, who dress Skins or Hides, or Pieces of them, in Oil, Allum and Salt, or Meal or other Ingredients, and who cut and make the same into Wares, and Tawers and Dressers of Leather, are subject to like Penalties.

Officer. Must within two Days after Notice make an Entry.

Taking any Fee or Reward for any Entry, Account, Permission, Certificate, Mark or Receipt, forfeits 5 l. to the Party grieved for every Offence; Conviction to be by two Justices upon

upon Oath, and the Prosecution within three Months after the Offence; but an Appeal lies to the Sessions.

Two Justices may hear and determine Offences against both Justices the said Acts, by summoning the Party accused, and the Witnesses on either Side, and examining them on Oath; but the Prosecution must be within * three Months, and an Appeal lies to the Sessions, and no *Certiorari* shall be allowed; yet the Justices may mitigate the Forfeiture, so as the Charges of Prosecution be allowed over and above such Mitigation, and so as the Penalty be not reduced to less than a fourth Part.

After Seizure, for the Offence committed.

Note, That Commissioners on this Statute have the same Power as Commissioners of Excise, and all Commissioners and Officers are liable to the same Disabilities and Forfeitures as in 9 & 10 W. cap. 24.

Statute 10 *Anna*, cap. 26. lays additional Duties on Hides, &c. 10 A. c. 26. 9 A. c. 11.

By the aforesaid Stat. 9 *Anna*, cap. 11. 'tis enacted, That after the Duty is paid, and Entry thereof made in the Officer's Book, he shall cause every Hide and Skin to be marked in such Place as the Tanner desireth; and if removed from the Yard or Drying-place by the Tanner, &c. or if any Buyer shall carry it from thence before it shall be marked, they shall respectively forfeit 50 l. for each Offence; one Moiety to the Crown, the other to the Informer; and the Skins are forfeited to the Crown.

The Warrant to levy the 50 l. or the mitigated Penalty.

To the Constable, &c.

Surrey, ss. **W** Hereas Complaint hath been made unto us R. B. and W. A. two of his Majesty's Justices of the Peace for the said County, and both of us residing near the Place where the Offence herein after-mentioned was committed, that T. P. of, &c. did on the 30th Day of this instant July † carry away from the Yard † Or as the of R. P. in, &c. two Calve-Skins before the same were marked by Offence in the proper Officer for that Purpose appointed, and contrary to the Statute in that Case made and provided: We did therefore command the said T. P. to appear before us on the Day of the Date hereof, at the House of S. A. in L. &c. commonly known by the Name of the Red Lyon, where he did appear accordingly. And we upon Examination of Witnesses, and due Proof thereof made on Oath, did then and there adjudge the said T. P. to be guilty of and in the Premises, by Reason whereof he hath forfeited 50 l. We do therefore require you forthwith to levy the Sum of 25 l. upon the Goods and Chattels of the said T. P. to which said Sum we have mitigated the aforesaid Forfeiture of 50 l. and if the Goods so taken shall not be redeemed

Leather. Leet.

within six Days afterwards, that then you sell the same, and pay one Moiety of the 25 l. to the King, and the other Moiety to R. B. who first informed us of the said Offence, deducting 5 l. for his Charges in the Prosecution thereof. Given, &c.

And no Information shall be brought in the Courts at Westminster in Cases where these Offences are cognizable by the Justices; and no Certiorari shall be allowed to remove their Proceedings, but their Determination shall be final.

Leet.

Before the
Conquest.

THIS is a Court of Record, and derived out of the Sheriff's Tourn, for the Ease of the People, that Justice might be administred near their own Doors. It was therefore granted by the King to particular Lords, who at first were to view the Tenants and Resiants at certain Times in their Manors; and from hence 'tis called, *Curia visus franci plegii*, which Name it retains to this Day.

Now this Court being instituted for the Ease of the Tenants within a particular District, and that they might be at no Charge, or Loss of Time to travel to the Sheriff's Tourn; therefore it seemeth reasonable, that something should be paid by them towards the Charge of obtaining the Leet; and from hence came the Duty to the Lord *de certo Leto*.

Before the Institution of a Leet, every Freeman, when he was twelve Years old, was bound to take the Oath of Allegiance in the Tourn; and after the Leet was established, then he was bound to take it within that particular Precinct, and if he could not then find Pledges for his Truth to the King and the People, he was to be committed till he could.

These Pledges, or free Pledges, consisted of ten Families, the Masters whereof were bound for one another and their Families, that each Person therein should stand to the Law; and if he was not to be found, that then they should answer for any Injury he had done.

And these were the Pledges the Lord or his Steward were to view in the Leet, which comprehended those ten Families, and no more; but afterwards the Authority of the Leet was enlarged by many Statutes.

Steward thereof cannot grant Surety of the Peace, unless by Prescription; but he may commit those who make an Affray before him in the Execution of his Office, or bind them to the Peace or Good Behaviour.

He may take a Presentment of an Offence against the Peace.

Liberties and Franchises.

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In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet shall be fined to the King.

Steward ought to give the Statute of 1 *El. cap. 17*, concerning Fish in Charge, or forfeits 40 s. between the King and Prosecutor.

He cannot *amerce* for any Thing but publick *Nusances*, nor for particular Trespasses either against the Lord or any other Person; for if he doth, an Action lies against him. ^{1 Saund. 135. Raym 169.}

Letter. See Behaviour, Libel and Post-Letters.

Liberties and Franchises.

ARE such which have Return of Writs, and not such which are Counties of themselves; as *York, Bristol, &c.* nor Towns which have Justices of Peace by Grant of the King; so that no other Justice intermeddles there.

Justice of Peace may execute his Authority within any Liberties, not being a County, and it is good; but yet the Lord of that Liberty may have a Remedy against him.

Libellers and Libels.

MY Lord Coke (who often quotes Scripture in Law-Cases) ^{Job 30. 2.} tells us, That *Job* himself was impatient at a Libel; but he who reads the Text will find, that it was not a Libel which provoked him, but because he was so miserable as to be derided by mean and despicable Persons, who was formerly the greatest Man in the *East*.

So that Laughing at the Calamities of another, is so far from being a Libel, that Laughing at a Libel it self is no Fault; for ^{9 Rep. 9. 13. Moor 813.} if I hear it read, and laugh at it, it is no Publication.

Every Libel is either in Writing, or without it.

If in Writing, then *Copying* it, and Delivering that Copy to another, is a Publication; so is Repeating it to others after he hath heard it read; or Reading it to them, knowing it to be a Libel. ^{Moor 627.}

If without Writing, then it may be by Pictures; as to paint a Man in Fool's Colours; by Signs, as to fix a Gallows, or any other shameful Sign, at the Door of the Party. ^{Rep. 25.}

A Man affirmed, That my Lord Chancellor *Bacon* had done Injustice, and spoke other scandalous Words of him; for which he had Sentence to perpetual Imprisonment, to pay 1000 l. to ^{Poph. 135.}

ride on a Horse with his Face to the Tail, from the Fleet to Westminster, with his Fault written on his Head, to acknowledge his Offence in all the Courts at Westminster, to stand in the Pillory, and that one of his Ears should be cut off there, and the other in Cheapside.

To libel any private Person is an Offence punishable as aforesaid; but to libel a Magistrate is a great Aggravation of the Crime. I shall give some Instances in both.

Private
Persons.

Hob. 120.

Hob. 153.

Moor 627.

And first to private Persons: A Man writes libellous Letters, which he dispersed in the Fields, without sending any to the Person himself; this is punishable as a Libel, tho' the Matter is true, for it is not to be justified in an Information; but in an Action on the Case, for printing and publishing a false and malicious Libel, the Defendant may justify that it was true, and many such Actions have been brought. *Hardres* 470.

1 Vent. 31. Information against the Defendant for causing a scandalous Libel to be framed, printed and published; upon Not guilty pleaded, the Evidence was, that upon Search of the Defendant's Lodging by a Warrant from a Secretary of State, two of the Libels were there found: Adjudged that tho' the Defendant could give no Account how he came by them, yet this was no Crime within the Information, unless he had maliciously published them.

5 Mod. 169. Where one did pronounce, dictate and repeat the Words, and the other did write them, the Question was, Whether the Writer should be guilty of composing and making the Libel? It was insisted that he should not; for if he should, then every Man who writes a Libel must make and compose it; but adjudged that he who dictates, and he who writes the Libel are both guilty, because the Writing shews an Approbation of the Libel dictated, and they are both Makers of it; for all who concur and shew their Approbation to an unlawful Act, are Guilty.

8 Salk. 417. Indictment for composing, writing, making and collecting several Libels; in one of them amongst other Things it is contained *juxta tenorem & effectum sequentem*, the Defendant was found guilty as to the Writing and collecting, and not guilty as to the Rest: Adjudged that the Copying a Libel without Authority, is Writing a Libel, and he who thus writes, is a Contriver of the Libel; and when the written Copy of a known Libel is found upon him, it is an Evidence of the Publication of it; but if such Libel be not publicly known, then the bare having a Copy is no Publication: That there is a Difference between *Tenor & effectus*, for if this Indictment had been *juxta effectum sequentem*, it had been naught, because the Court is to judge of the very Words, and not of that Construction which is made by the Prosecutor; for the Tenor of a Thing is the Transcript, and imports the Words themselves: That the bare Writing

Writing a Libel is criminal, yet it was not punishable in the * Hob. 62.
* Star-Chamber. Het. 4.

A Man was a Suitor to a rich Widow, and the Defendant wrote a Letter to her, advising her not to marry him, for he was a debauched Person, and had the Pox, and was not worth a Groat; and that he declared, if he married her, then he would allow 50 *l. per Annum* to a Whore; This Letter was conveyed to the Widow, but not subscribed by the Defendant; but upon Evidence it appeared to be his Writing; he was fined 200 *l.* at Sessions. Moor 421.
Sid. 270.
Lev. 139.

To libel the Government is a greater Offence than to libel Magistrates. Against Magistrates.

A Man was indicted for saying, That *Campion* was not executed for Treason, but for Religion, and that he was as honest a Man as *Cranmer*; but the Jury did not find, whether the Words were spoken *malitiose* & *seditiose*, and so the Defendant was discharged. Leon. 287.

One *Jeffs* libelled my Lord *Coke*, for the Judgment in the Cro. Car. Case of *Magdalen College*, by writing, That it was Treason, 175.
and he a Traitor and perjured Judge; this he fixed on the Gate of *Westminster Hall*, for which he was sentenced to stand in the Pillory with a Paper, &c. and to be committed till he made his Submission in every Court: He was also to find Sureties for his Good Behaviour for Life, and to pay 1000 *l.* to the Cro. Car. King.

But a more grievous Fine was set upon the Defendant, for speaking Words against a *Judge sitting in Court*; and this was one *Harrison's Case*, who came to the Court of *Common Pleas* and said, *I accuse Mr. Justice Hutton of High Treason*: The Man was angry with this Judge for his Argument about Ship-Money, in which he affirmed, amongst other Things, That the King could not charge his Subjects to find Ships, &c. He was fined Sid. 219.
5000 *l.* and imprisoned during the King's Pleasure.

The Defendant deliver'd a Paper to the Parson to publish in the Church, in which are these Words: *You are desired to bewail the Wickedness, &c. which of late is broken out in this (formerly) well-governed City of Exeter; that God would turn their Hearts from committing those Wickednesses, which go unpunished by Magistrates.* He was fined 100 *l.* tho' it is no direct Accusation of the Magistrates, for it doth not set forth that they did know what Wickedness was committed, and let it be unpunished.

Information against the Defendant for writing a Libel against the Government, containing several scandalous Things, *secundum tenorem sequentem*, and amongst the Rest there was a Sentence in which the Word *nor* was mistaken for *not*; and this being found specially, it was adjudg'd that *Tenor* implies a true Copy, which this was not, because *nor* differs from *not* both in Grammar and Sense, and no Man can swear that the Libel set forth in the Information is a true Copy of the written Libel;

That there are two Ways of describing a written Libel, either by the Words or Sense: The first is, *Cujus Tenor sequitur*, or *Quæ sequuntur in his Anglicanis verbis*, in which the Description is by particular Words, and of which every Word is a Mark, so that if there is any Variance, 'tis fatal; the other Description is by the Sense, and that is to set forth in the Information that the Defendant made a Writing, and therein wrote so and so, translating it into *Latin*, in which 'tis not material to be very exact in the Words, because the Matter is describ'd by the Sense of them.

Libellers may be punish'd by Indictment, and fined, or by an Action on the Case where the Words are actionable; if a Libel against a private Person should be found, it ought to be burn'd, or carried to a Magistrate.

If against any Person in Office, or Magistrate, it ought to be deliver'd to some Magistrate, that the Offender may be found and punish'd.

The Person to be convicted, must be either the Contriver of the Libel, or a Procurer of contriving it, or a malicious Publisher; but reading or hearing it read, is no Publication, unless he repeat Part of it afterwards in the Hearing of another. 9 Rep. 58.

Moor 627.

§21.

2 Brownl.

151.

Hob. 62.

215.

Raym. 201.

Poph. 140.

If a scandalous Letter be directed to the Party himself, and not to a third Person, no Action on the Case will lie, because 'tis not a Publication; but this tends to the Breach of the Peace, and therefore shall be punish'd by Indictment, or by Information.

And yet Sir Francis Bacon said, That such a private Letter doth in a Manner compel the Party to whom 'tis sent, to publish it to his Friends for their Advice, and for fear it should be publish'd on the other Side; so that this compulsory Publication shall be taken as a Publication by the Delinquent; the Fine was 500 l.

If a Libel is found in an House, the Master of that House cannot be punish'd in an Information for framing, printing and publishing it; but he may be indicted for having it, and not delivering it to a Magistrate. 1 Ven. 31.

It hath been a Question, Whether a Person could be indicted before the Justices of Peace for a scandalous Letter concerning a private Person; because in the Commission of the Peace there are no Words to warrant it; but in the Commission of Oyer and Terminer, there is a Clause for that Purpose; viz. *De propagationibus verborum*; yet 'tis now resolv'd, That such a Letter is indictable at the Sessions, because it tends to the Breach of the Peace. 1 Lev. 139.

So do the Words spoken of a Justice, as that he is not fit to talk Law. 3 Mod. 139.

Indictment

Indictment for a Libel against a Justice of Peace.

Middl' ff. **J**UR' &c. quod cum 3 die Augusti Anno Reg' &c. apud H. in Com' p'ed' Gaol' dicti Dom' Regis ad Generalem Quarterial' Session' Pacis tent' adtunc & ibid' coram A. S. ac J. P. Bar' & aliis Sociis suis Justiciar' dicti Domini Regis ad Pacem in Com' p'ed' conserband' necnon ad diversas Felonias, Transgressiones, & alia Malefacta in eodem perpetrat' audiend' & terminand' assign' de quibusdam Prisonatis in eadem Gaola adtunc & ibid' indicat' rite & secundum leges & cons. hujus Regni Angliæ deliberat' fuit quidam tamen J. O. nuper de H. in Com' p'ed' Yeoman, p'missorum non ignarus, sed machinans & intendens p'ed' Justiciar' in magnum scandalum & infamiam inducere postea scil' quinto die Augusti, Anno Regni, &c. apud H. p'ed' in Com' p'ed' malitiose quendam famosum libellum (Anglice vocat' a Libel) in scriptis ad defamationem Justiciar' p'ed' edidit & publicabit continen' inter alia hec falsa & scandalosa verba sequen' ff. ubi rebera, &c. contra Pacem dicti Domini Regis Coron' & Dignitat' suas, necnon contra soz' * Will. 1. mata * Stat. in hujusmodi casu edit' & p'obil. cap. 24.

Library.

THE Provision for the Clergy is so very mean in many Places, that they cannot buy such Books which are necessary for their Studies; therefore several Libraries have been erected by charitable Contributions; and by a late Act of Parliament, Provision is made to preserve the same. * 7 Annæ, cap. 14.

By which Act, every Incumbent, before he shall be permitted to use such Library, must enter into a Bond to be approved by the proper Ordinary, conditioned for the Preservation of the Library, and to observe the Rules and Orders belonging to the same.

And if any Book shall be taken away or detained, the Incumbent, or any other Person, may bring an Action of Trover in the Name of the proper Ordinary, and shall recover treble Damages with full Costs; which Damages shall be applied to the Use of the Library.

The said Ordinary, or his Commissary, or his Official, or the Archdeacon, or his Official or Surrogate, if the said Archdeacon is not incumbent of the Place where the Library is, may enquire in their Visitations of the State of such Library, and the Ordinary may appoint any Person to view it.

And

Library. Licence.

And where a Library is appropriated to the Use of the Incumbent, he must, within six Months after his Induction, make a new Catalogue of all Books in the Library, and must sign the same, acknowledging the Possession of such Books, which Catalogue he must deliver to the proper Ordinary within the Time aforesaid.

And upon any Vacancy, the Library shall be locked up by the Church-wardens, or by a Person appointed by the proper Ordinary, or by the Archdeacon, unless the Place where such Library is kept shall be used for the Vestry, or otherwise, for Dispatch of Business; and after that is done, the Place shall be lock'd up.

And likewise, a Book shall be kept in the Library for the entering of all Benefactions, which the Incumbent is to see fairly enter'd, and the Ordinary is to make proper Rules and Orders, but not contrary to the Order of the Donor, which shall be enter'd in the said Book.

None of the Books shall be alienable without the Consent of the Ordinary, and then only when there is a Duplicate of such Book: And if any Book is taken away or lost, a Justice of Peace may grant his Warrant to search for the same; and if 'tis found, the Justice shall immediately order it to be restor'd to the said Library.

A Warrant to search, &c.

To the Constable, &c.

Suffex, ss. **W**Hereas Complaint hath been made before me, by W. C. Rector of B. in the said County, That a Book, called Hooker's Ecclesiastical Polity, was lately taken out of the Library erected at B. aforesaid, and appropriated to the Use of the Minister there. These are therefore to require you to search diligently in all Places where you and the said W. C. shall suspect the same to be; and in Case the same shall be found, that then you immediately cause the same to be restored to the said Library, &c.

Licence.

39 Eliz.c.4. **L**icences must be dard the Day of the Sessions, and must be sealed by three Justices, under Penalty of 5 l. and the Sessions must take Bond, that the Person licensed shall not forestall: The Licence costs 1 s. and the Recognizance 4 d.

A Wo-

A Woman can have no Licence, and those Men who have Licences must sell their Goods themselves, and not by their Servants.

Two Justices may license poor diseased Persons to travel to the Bath for Remedies, so as they are provided of Relief in their Travel, and do not beg.

Without a Licence Persons must not buy Corn but in Markets.

Sessions determine these Offences. 3 & 4 Ed. 6. cap. 21. and 5 & 6 Ed. 6. cap. 14.

Linen Cloth.

HE who by racking, beating, or casting any deceitful Liquor, or by other Means, on Linen Cloth of any Sort to make it deceitful, or the worse for Use, forfeits the Cloth, may be committed for a Month, and fined according to the Discretion of the Justices. 1 Eliz. cap. 12.

Lodgers.

TAking away with an Intent to steal or embezel any Bedding, Furniture or Chattel, which by Agreement they are to use with their Lodging, 'tis Felony. 3 & 4 W. & M. continued by 4 & 5 W. & M. cap. 24.

Loom-Lace. See Bone-Lace.

Low-bells, Lurcher. See Dogs.

Maihem.

THIS is a Corporal Hurt, whereby the Use of any Member is lost, which might be either a Defence to one's Person, or occasions any Deformity; as if a Bone, Finger, or Joint, is so broken, or wounded, that it is made crooked and shrinks, or an Eye put out, or a Tooth broke, &c.

The old Writers have been so nice in this Matter, that they affirm it must be a Fore-Tooth broken; for if the Grinders or Cheek-Teeth are beat out, they say 'tis not a Maihem, *quia latens & non inducit corporis deformitatem*. Staundf. 39.

But

But yet they allow Castration, *quavis latet*, to be a Maim; and my Lord Coke cites a Record to prove it, viz. *H. Hull in dictatus fuit de Maimio eo quod abscedit virilia Johannis Monachi*, whom he caught in Adultery with his Wife.

Cutting off the Ear, no *Maim*, *quia latens*; for this Offence an Indictment may lie at the Sessions, only with this Difference, That when a Fine is set, the Justices cannot encrease it upon View of the Person maimed, as the Court of B. R. may.

The Judgment upon a Conviction or an Indictment is a Fine, and upon an Action of Trespas, Damages, &c. and therefore a Recovery in Trespas is a good Bar in an Appeal of *Maim*.

In an Appeal of *Maim*, the Defendant pleaded in Bar, That the Appellant had recover'd 200 Marks against him in an Action of Assault, &c. and averred it was for the same Offence, and this held a good Plea.

Moor 268.
1 Leon. 318
4 Rep. 45.
See 5 H. 4.
cap. 5.

But now by the Statute of 22 & 23 Car. 2. cap. 1. 'tis made Felony without Clergy in all their Counsellors, Aiders and Abettors, maliciously to cut off and disable the Tongue, put out an Eye, slit or cut the Nose, or cut off or disable any Limb or Member, with an Intention to maim or disfigure.

9 Annæ,
cap. 16.

Any Person unlawfully attempting to kill, or shall unlawfully strike, assault or wound a Privy Counsellor in the Execution of his Office, he shall suffer as a Felon without Benefit of Clergy.

Indictment.

Suffex; ff. **J**UR', &c. quod quarto die Augusti, Anno Regni, &c. J. O. de H. in Com' p'ed' Ycoman, vi & armis clausum cujusdam T. B. apud H. p'ed' in Com' p'ed' fregit & intrabit & in dict' T. B. adtunc & ibid' in Pace Dei & dict' Dom' Reg' existen' insultum fecit ac cum quodam gladio districto (or as the Case is) ad valentiam trium solidor' quem dictus J. O. tunc & ibidem in manu sua dextra tenuit p'efat' T. B. maliciose & illicite verberabit ac dextram pollicem p'ed' T. B. adtunc & ibid' amputabit, ac sic eundem T. B. nequiter * ac felonice adtunc & ibid' Maimabit ad grave nocumentum ipsius T. B. ac contra Pacem dicti Dom' Regis Cozon' & Dignitat' suas.

* These Words are requisite, because

formerly the Offender was to lose the same Part, it being Felony at Common Law.
3 Inst. 18.

Maintenance.

IS an Upholding any Quarrels by Word or Writing, (having nothing to do therein) to the Disturbance of Common Right; 'tis a Crime which the Normans first brought into England, for it was never put in Practice before that Time. Moor 362. 815, 816.

Culpa est rei immiscere sibi non pertinenti.

'Tis thus divided, viz. $\left\{ \begin{array}{l} \text{Ruralis.} \\ \text{Curialis.} \end{array} \right.$

Manutenentia Ruralis is the unlawful taking or keeping Possession of another Man's Estate; this is punishable at the Suit of the King.

Manutenentia Curialis is to maintain one Side in any Suit in a Court of Justice, but it must be *Pendente Placito*; for if Money is given before the Suit begun, 'tis not Maintenance. 3 H. 6. fol. 53.

When the Maintainer is to have Part of the Land or Debt when recover'd, 'tis *Champerty*; but where he is to have no Part of it, 'tis *Maintenance*; when he laboureth for Witnesses either to appear, or by instructing them, or threatening, &c. then he is an Embracer, and may be punish'd at the Suit of the King or Party. Maintenance
Champerty. Embracery.

To inform a Jury voluntary, not as a Witness, but of his own Head, is Maintenance. 28 H. 6. fol. 6.

One Juror giving Money to another to pass a Verdict, is Maintenance. 17 Ed. 4. fol. 5.

If a Man of Power or Authority shall declare in the Presence of many People, that he will spend Money for such a Person in a Suit, &c. 'tis Maintenance. 9 H. 7. fol. 18.

To write a Letter to a Juryman to appear; if 'tis done by one who is no Party to the Suit, 'tis *Maintenance*, but if by one of the Parties, 'tis *Embracery*: yet my Lord Hobart tells us, That where the Defendant was indicted for desiring a Juror to appear, and to do him reasonable Favour, or Words to the like Effect; this is not punishable, because the Court must know the very Words. Moor 816.
2 Leon. 134.
Hob. 295.

To assist a Person prosecuting an Indictment, is not Maintenance, because it is for the Advantage of the King; but it is, otherwise if the Prosecution had been by an Information upon a Penal Law. Gob. 169.

Hob. 92. So when Men have a joint Interest, as for Right of Common;
 *But where there they may join and enter into Bonds to defend that Right
 'tis a Free- against the Lord or any other Person, and this is not Mainte-
 hold, or nance; * because 'tis in Effect but the Interest or Suit of one;
 where one joins who and as they have this Prejudice by it, that one cannot be a
 hath no In- Witness for the other, therefore 'tis reasonable they should all
 terest, it is join for their common Advantage.
 otherwise.
 Moor 562,
 788.

This Crime is punishable, either by an Indictment at Com-
 32 H.8.c.9. mon Law, or by an Information upon the Statute of 32 H. 8.
 which is, That none shall unlawfully maintain any Suit, or retain
 any Person for Maintenance, embrace Furors, or suborn Witnesses, on
 Pain to forfeit for every Offence 10 l. to be divided between the King
 and the Prosecutor.

Dyer 53. The preceding Paragraph of that Statute is, (viz.) That shall
 by any pretended Title to Land, unless the Seller hath taken the
 Profits thereof one whole Year next before such Bargain; if he
 doth, then both Buyer and Seller are each to forfeit the Value
 of the Land.

Moor 266. A Woman was disseised, and being out of Possession, and
 751. not making any Entry, she made a Lease of the Lands to her
 1 And. 201. Brother to try the Title against the Disseisor; and this was
 1 Leon. 162. held Maintenance, though no Interest passed to the Lessee; so
 likewise where one supposed he had a Title, and contracted
 with another to sell it, and made a Lease to a Friend to try the
 Title, tho' no Action was brought, or any Thing done on it.

Soliciting the Jury, and shewing them Precedents where
 great Damages were given in a like Case, it is Maintenance.
 3 Cro. 736.

Indictment thereon.

Kanc' ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Gen'
 4 die Augusti, Anno Regni, &c. apud H. pzed' in
 Com' pzed' * quandam Actionem que fuit in Cu-
 ria Dom' Reg' coram ipso Rege existen' inter quendam T. P.
 Querentem, & F. C. Defend' de Placito debiti pro parte pzed'
 T. P. versus pzetat' F. C. injuste & illicite manutenuit & sus-
 tentabit contra formam Statut' in hujusmodi casu edit' & pro-
 vis. & in manifestam retardationem & disturbantiam Justitie,
 ac in dicti Dom' Reg' contemptum, & pzed' F. C. grabe dam-
 num, ac contra Pacem dicti Dom' Reg' Cozon' & Dignitat'
 suas.
 * It must
 set forth a
 Suit.
 Savil 42.
 † This be-
 ing the
 Word in
 the Statute,
 it had been
 naught if
 omitted.
 Savil 41.
 1 Vent. 302.

Prosecution on the Statute must be within a Year after the
 Offence committed.

Mayor.

THIS is the Chief Magistrate of a Corporation; he is mentioned in several Statutes, and generally hath the same Authority in the Corporation as a Justice of Peace hath in the County at large.

I shall mention his Authority by some Statutes.

Alehouse-keepers unlicenced: He may commit and levy the Penalties. 3 *Car.* 1. *cap.* 3.

Armed Men riding: May punish. 2 *Ed.* 3. *cap.* 3.

Custom Officers: He may commit those who abuse them. 14 *Car.* 2. *cap.* 11.

Customs: May grant Warrants to search for Goods not paying Customs. 12 *Car.* 2. 19.

Gamesters unlawful: May commit them. 33 *H.* 8, 9.

Leather: May determine Matters concerning it.

Orchard Robbers: May punish. 43 *Eliz.* 7.

Sabbath-breaking: May put in Execution the Acts concerning it. 3 *Car.* 2.

Swearers and Cursers: May punish. 21 *Jac.* 20.

Soldiers departing without Licence: May arrest. 10 *H.* 6. 15.

Weights, false: May punish those who use them. 11 *H.* 7. 4.

Malt.

UPON the Statute of 2 & 3 *Ed.* 6. *cap.* 10. it is to be considered: What Time is allowed

In *June, July* and *August*, it must be seventeen Days in the forming Fat and Floor steeping and drying, and in other Months three Malt. Weeks.

Out of every Quarter half a Peck of Dust shall be taken either by Treading or Rubbing, &c. before 'tis put to Sale, or thereof, forfeits 20 *d.* per Quarter if sold, to be divided between the King and Prosecutor.

If bad and good is mingled and put to Sale, forfeits 2 *s.* per Quarter, to be divided (*ut prius.*)

Constables may search where bad Malt is made or mingled with good, and by the Advice of a Justice may sell it at Discretion.

In Sessions, by Presentment of the Jury, or by the Information of two Witnesses.

Offences where to be determined.
Pro-

Prosecution must be within a Year, &c. but those who make it for their own Use, cannot be punish'd by this Law.

Upon 32 *Eliz.* cap. 16.

Justices in Sessions may restrain their Number, and likewise the Number of the Buyers of Barley to malt it.

Maltsters.
Repealed
by 9 & 10
Will.

Disobeying such Restraint, and being convicted by two Witnesses, or Confession, may be committed three Days without Bail, and to continue till he enter into a Recognizance of 40*l.* before one Justice to obey the Restraint.

But Justices of the County at large cannot execute this Law in Corporations, it must be done there by the Justices of the Corporation, or chief Officer, &c.

13 & 14
Will.

1 Annæ
continued
by 7 A. c. 3.

9 A. c. 3.

12 A. c. 3.

1 G. c. 36.

3 G. c. 4.

continued

till 24 June

1718.

4 G. c. 2.

continued

to 24 June

1720.

6 G. c. 3.

continued

to 1721.

1 A. cap. 3.

By the Statute of 13 & 14 *Will.* there is a Duty of 6*d.* per Bushel given to the King, his Heirs and Successors; and it is enacted, That if that Duty is paid, and the Malt should perish, either by Fire or Water, the Collector of the Duty shall repay it to him.

But then he must prove his Loss at the Quarter-Sessions by Oath of two Witnesses, and the Justices in Sessions must certify it under their Hands and Seals, and upon producing that Certificate, the Money must be paid.

By the Statute of 4 *Annæ*, the like Proof must be made at the next Quarter-Sessions, if the Malt is taken by the Enemy, and upon the like Certificate the Collector of the Duty is oblig'd to pay so much to the Proprietor as shall have been by him paid for the Quantity of Malt so proved to be taken.

If any Malt shall be damag'd by the Casting away, or Sinking of the Vessel, the Justices in Sessions upon Proof thereof, and of Payment or Security given for the Duty, may settle the Quantity of the Damage, and what Allowance to make; and certify the same under their Hands and Seals; and the Proprietor producing that Certificate to the Collector of the Duty, he shall repay or allow the Sum therein certified; or in Default thereof the Proprietor may deduct it out of any subsequent Duty becoming due.

The Person sustaining any Damage, &c. must three Days before the next Sessions give Notice in Writing to the Collector, &c. where such Damage shall happen, of his Intention to apply himself to the Sessions.

6 G. c. 21.

After 24 *June* 1720, no Malster or Maker of Malt for Sale or Exportation, shall wet his Barley on the Floor, or any other Place but in his Cistern, duly entered for that Purpose at the Office of Excise of the Division or Place, &c. on the Forfeiture of 2*s.* 6*d.* per Bushel.

Nor shall permit any Corn to sprout at the End from which the Blade proceeds; if he doth, then an Officer may take up an Handful in any particular Part of the Floor or Wetting; and, if he find that more than one Part in fifteen in his Hand,

sprouts

sprouts out at the End, the entire Wetting shall be deem'd of the same Nature, and the Malster shall be charged with the full Duty of six Pence *per* Bushel, and likewise shall forfeit 5*s.* for every Bushel.

Upon Appeals to the Sessions from any Judgment given by particular Justices, upon Informations for Offences relating to the Duties on Malt, Hides, and Skins, &c. the Sessions may re-examine the Truth and Merits of the Fact, upon the Oaths of the Witnesses, and finally determine the same, and rectify and amend any Defects of Form in the Orders of particular Justices.

After 25 *March* 1723, and after the Duties by 12 *Anne* cap. 9 Geo. c. 3: 2. imposed on Malt, and hereby continued, are paid, if any Quantity thereof shall happen to be destroyed or damaged by Fire, or shall perish or be damaged by the Casting-away of, or by any inevitable Accident happening to any Barge or Vessel, in which the Malt shall be transporting from one Part of this Kingdom to another, or put on Board for that Purpose, and this being proved by the Oath of one or more credible Witnesses, and of the Duty being paid before the Justices in the Quarter-Sessions, then the Sessions may grant a Certificate thereof, and of the Amount of the Duty; and upon producing such Certificate to the Collector of the Duties on Malt, he shall repay the Proprietor so much Money as the Sum certified to be paid for the Duty of the Malt so lost shall amount unto; and if not totally lost, but damnified only, the Sessions shall settle the *Quantum* on Proof of the Damage and Payment of the Duty, and certify under their Hands and Seals how much they allow for Damages to be repaid by the Collector. See the *Statute*.

Before I leave this Title, I cannot but take Notice, That my Lore *Coke*, paraphrasing upon the aforesaid Statute of *Ed.* 6. tells us, That the Evils therein prohibited are *mala in se*, which he likewise tells us may be applied to *Hops*, and punishable by the Common Law.

'Tis not easily to be apprehended how an Evil only prohibited can be *malum in se*, nor that the Mingling bad *Hops* with good is punishable at Common Law, since we had no *Hops* in *England* before the 15th Year of *Hen.* 8. that being the first Time they were brought hither from the *Spanish Netherlands*.

Manufactures. See *Apprentice*.

Banlaughter. See *Homicide*.

Barriage. See in *Felony*, and *Ucman*.

Bariners. See *Seamen*.

Markets and Fairs.

THese are either by Grant or Prescription, and if held otherwise, they are unlawful. 2 *Saund.* 174.

Now because it may be necessary to know how far the Property of a Thing is devested by Sale in Market Overt; therefore 'tis to be considered.

That in *London* every Day, except *Sunday*, is a Market Overt, and the Sale in Shops there for a valuable Consideration is good.

5 Co. 85. But then it must be of such Goods which are proper to the Trade of him in whose Shop 'tis sold, as Plate to a Goldsmith, &c.

* 3 Rep. 78. And it must be sold openly in the Shop, and not in a secret Manner; and the Buyer must not * know that the Goods are stolen. In the Country, where Things are sold in distinct Places in a Market or Fair, the Goods must be sold in the usual Place appointed for the Sale thereof, otherwise the Property is not alter'd. *Moor* 300.

If I deliver Goods to another to keep for me, or if I pawn them, and he sells them in a Market, the Property is still in me. *Heb.* 79.

Sale upon a *Sunday*, though in a Market or Fair, shall not alter the Property.

It hath been a Question whether a Clerk of a Market can distrain, *ex Officio*, for using unlawful Weights or Measures, not according to the Statute.

Measure. See *Weights*.

Militia. See *Soldiers*.

Miller. See *Weights*.

Minister. See *Divine Service*.

Misdemeanor.

S.d. 186.

ONE sent a *Challenge* by another to fight; they were both indicted for a *Misdemeanor*, and fined 100*l.* a-piece, and committed for a Month without Bail, and were to make a publick Recantation as the Court should direct, and to be of the Good Behaviour for seven Years.

It would be endless to enumerate the several Offences which might be proper under this Title, I shall therefore mention a few, and no more.

A Man and his Wife disagreeing, she applied herself to one Poph. 129. *Golding* a Parson, and offered him 40 s. to whip her Husband. The Parson undertook it, and came to the House in Woman's Cloths, and to the Chamber where her Husband was, and endeavoured to whip him with a Rod; in striving they were both hurt; the Parson run away from the Husband, who died a little after the Scuffle: All this being proved, the Wife and the Parson were each of them fined 500 l.

Sir C. S. was indicted at Common Law for a Misdemeanor, Sid. 162. viz. for shewing himself naked in a Balcony in *Covent-Garden*: He confessed the Indictment, was fined 2000 Marks, and to be committed for a Week without Bail, and to be of the Good Behaviour for three Years.

Another was indicted for seducing an Apprentice to a Baw-Sid. 168. dy-House, and causing him to spend his Master's Money.

Another for intending to kill the Master of the Rolls, and Sid. 231. offering a Person 100 l. to do it; he was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of Good Behaviour during Life.

Another for reading a Release to an illiterate Man in other Sid. 312. Words than it was written, which he sealed.

Misprision.

IS where one knoweth that another hath committed Treason Of Treason or Felony, but was not consenting to it, and yet conceals the Offender.

If he knoweth of the Treason before it is committed, and assents to it, then he is a principal Traitor.

So if he receive and comfort a Traitor, knowing him to be so.

Concealing Treason was Treason by the Common Law, but now by the Statute of 1 & 2 Mar. cap. 10. it is declared to be Misprision.

Forging Foreign Money is Misprision of Treason, per 14 El. cap. 3.

The Judgment in Misprision of Treason is Forfeiture of 3 Inst. 134. Goods for ever, Forfeiture of Profits of Lands during Life, and Imprisonment during Life.

To draw a Sword, or strike a Judge or Juryman in the Presence of a Judge sitting in Court; to strike one in *Westminster-Hall*, sitting the Courts, like Judgment as in Misprision of Treason, and shall likewise lose his Right-hand.

Of Felony. By the Common Law, concealing a Felony, or procuring the Concealment, or compounding it, was Misprision.

But if a Man knows that a Felony is committed, and taketh his Goods again, 'tis no Offence unless he taketh them, or other Amends, not to prosecute; and then it is called *Theft-bote*, which is an Offence more than a Misprision of Felony, because it is more than a Concealment of the Felon.

But the Punishment is the same in both Cases, *viz.* Fine and Imprisonment, if in a common Person; if in an *Officer*, Fine; and though paid, Commitment for a Year.

Other Misprisions.

In a Grand Juror. { By discovering the Persons indicted, or Evidence; punishable by Fine and Imprisonment.

Judge. { By any Person assaulting him, the like Punishment.

Juror. { By assaulting him, for giving a Verdict against the Offender; the like Punishment.

Prisoner. { Rescuing him from the Bar of B. R. loses his Right Hand, Goods, &c. Profits of Lands during Life, and perpetual Imprisonment.

Striking. { Sitting the Courts at *Westminster* in Presence of the Court, or drawing a Weapon, the like Punishment.

Drawing Weapon. { In Presence of those Courts, or before the Judge of Assize, upon any Judge or Justice, though no Stroke given, the like Punishment.

Striking in the Presence of the King. { If Blood is drawn, Loss of Right Hand, and perpetual Imprisonment. *per 33 H. 8. cap. 22.*

Though Justices of Peace are not empowered by their Commission, or by any Statutes, to hear and determine these Offences; yet since 'tis against the Peace, they may cause the Offenders to be taken, and two Justices may take Informations upon Oath against such Persons, and put it into Writing, and bind the Witnesses in a Recognizance to prosecute and give Evidence at the Assizes, &c.

Mittimus.

MUST be to the Common Gaol. by 23 H. 8. *cap.* 2.
It must be under Seal.

It must contain the Cause of Commitment.

It must have an apt Conclusion, (*viz.*) There to remain till delivered by due Course of Law ; or else the Warrant is void.

The Cause of Commitment is necessary to be expressed, that it may appear whether the Person is bailable or not ; for if no Cause is expressed in the Commitment, then other Justices may bail him, though 'tis not adviseable so to do, without the Privy of the Justice who committed him.

Money.

IF any refuse lawful Money in Payment, he may be compelled by the Officer of the Place to receive it, and be committed or punished as he thinks fit ; and if an Officer refuse it, a Justice may punish him at Discretion. 19 H. 7. *cap.* 5.

Mortuaries.

ARE not to be taken, but where accustomed to be paid, nor where the Goods of the Deceased are under ten Marks.

A Spiritual Person taking more than 3 s. 4 d. where the Goods are under 30 l. and above 6 s. 8 d. where the Goods amount above the Value of 30 l. and under 40 l. or above 10 s. where they are above 40 l. forfeits all taken above his Due, and 40 s. besides to the grieved, to be recovered by Action of Debt, &c. 21 H. 8. *cap.* 6.

The Statute of 21 H. 8. so far as it relates to the taking any Mortuary on the Death of a Clergyman, in the Dioceses of Bangor, Landaff, St. David's, and St. Asaph, is repealed and made void. See the Statute. 12 A. c. 6.

Multiplication of Gold or Silver.

THIS is a changing any other Metal into Gold or Silver, by a Quintessence, as my Lord Coke calls it, or by any Elixir or Philosopher's Stone ; 'tis made Felony by 5 H. 4. *cap.* 4. 3 *Inst.* 14.

H h 3

Murder.

Murder.

IS defined by *Bracton*, who wrote about the later End of the Reign of H. 3. thus : That it was *Occulta hominum Extraneorum & notorum occisio manu hominum nequiter perpetrata*.

The Word *Occulta* was very necessary in this Definition, for it distinguished Murder from Manslaughter ; for if it was done secretly, it was always Murder ; but if openly, then it was only Manslaughter.

And as the Law then stood, if a Man was found slain, he was taken to be *Extraneus*, that is, a *Frenchman*, if it was not proved he was an *Englishman* ; which Proof was incumbent upon the Country, by Inquisitions taken before the Coroner, which he was bound to return to the Justice in *Eyre* ; and sometimes such Inquisitions were taken before those Justices themselves.

And since that Time the killing a Foreigner was always reputed Murder, though it happened *per infortunium* : Therefore if the Criminal was taken, he was to be tried by *Ordeal* ; if he was not taken, then the County was to be amerced ; but if a Foreigner had killed an *Englishman*, he was in no manner of Danger.

So that the Law being then so very severe against the *English* in Favour of the *Normans*, 'tis probable the Statute of † *Marlbridge* was made, and about the same Time in which *Bracton* wrote ; by which 'tis enacted, That *Murdrum de cetero non adjudicetur coram Justiciariis ubi per infortunium adjudicatum est, sed locum habeant de interfectis per feloniam, & non aliter*.

After the making this Statute, if a *Frenchman* had been killed by *Misfortune*, the County was not to be amerced, though the Criminal was not taken, neither was he to be tried by *Ordeal*, if taken.

But since *Bracton* wrote, we have another Definition of Murder, viz. That it is the killing any Person within the Realm upon *Malice forethought*, the Death ensuing within a Year and a Day. *H. P. C. Fol. 53.*

Moor 91.
Dyer 28.

This Crime is aggravated by the Quality and Condition of the Person who commits it ; as where a *Maid-Servant* and a *Stranger* conspired to rob the *Mistress*, and in the Night-time the Servant let the other into the House, and lighted him to her *Mistress's* Bed, where he killed her, the Servant neither doing or saying any Thing, but only held the Candle ; this is Murder in the *Stranger*, and Petit-Treason in the *Servant*.

So where the *Wife* and her *Servant* conspire to kill the *Husband*, and appoint both Time and Place, and the *Servant* alone, in

in the *Absence of the Wife*, killed him, this is Petit-Treason in both; but if he had been killed by a *Stranger*, the Wife should be hanged, and not burnt, because she cannot be guilty of Petit-Treason where the Principal is only guilty of Murder.

This Offence is punished with the Death of the Offender.

'Tis true, in the Time of our *Saxon Ancestors*, the Punishment for * Killing was not by Blood, but by Fines, for in those * That is, Days every Man's Head was valued according to his Quality, for Man- by a certain Coin called *Thrymses*; which being of the Value slaught, and not of three Shillings in Money, Mr. *Selden* has thus computed: Murder.

	l.	s.	d.	
A Country-man killed at	00	40	1	3 <i>Jani Anglo-</i>
A Man in Orders,	03	00	0	0 <i>rum, &c.</i>
A General, or Captain,	06	00	0	0 <i>fol. 113:</i>
A Bishop, or Alderman,	12	00	0	0
An Archbishop, or Nobleman,	22	50	0	0
The King,	45	00	0	0

Killing a Woman *with Child*, the Offender must pay not only according to the Value of her Head, but likewise for the Child in her Womb half as much as for a living Child, according to the Quality of his Father.

If above thirty were in Number, and one of them killed another, he that actually committed the Offence was to pay the Value of his Head slain, and likewise a Fine to his Kindred, and every one in the Company 30 s. which Penalty was to be encreased according to the Quality of the Person killed.

If a *Welshman* grew so rich as to have Land, and maintain a Family, and pay Tribute to the King, he was valued at six Pounds; and if he had no Lands, he was valued at three Pounds ten Shillings.

These were the Laws of King *Alfred*, and of his Grandson *Athelstan*: But these Punishments by Fines were only inflicted where the Person was killed upon a sudden Quarrel, which we call Manslaughter; but for a long Time afterwards, and until the Statute of † *Marlbridge*, the killing a Man by Mis- † 53 H. 3: fortune was adjudged Murder, with this Difference, That he might purge himself of such Offence, by paying the Sum according to the Valuation of the Party slain.

The Reason of this Pecuniary Compensation was rightly observed by Mr. *Selden*; it was, because our Ancestors were very tender of Life, that two Men might not die upon the Account of the same Misfortune: But premeditated and clandestine Murders were never excused by these Payments, those were always punished by Death, and so was Manslaughter likewise, where the Party was not able to pay the Valuation of him who was killed.

Indictment.

Before I shall examine the said Definition of Murder, I shall mention a few Things concerning the Indictment for this Offence, and the finding of the Jury.

3 Bulst. 206. If several are indicted for *Murder*, the Jury cannot find *Billa vera* as to one, and *Manslaughter* in the other; for if they find it so, a new Bill shall be preferred against those who are found guilty of *Manslaughter*.

2 Rol. Rep. 52. If a Man is indicted for *Murder*, they cannot find *Billa vera se defendendo*, for this is contradictory, and the Defendant must be indicted *de novo*.

Place. The Place where the *Stroke was given* must be set forth in the Indictment; and therefore it is not sufficient to say, That he assaulted the Person, and that he gave him a mortal Wound, without shewing in what Place.

1 Bulst. 1. Two of my Lord Dorset's Servants quarrelling at the Fire, went out and fought in the Park, *juxta Knowl*, and one was killed; for which the other was indicted, but it did not set forth in what Place or County the Park was, neither was the Word *† percussit* in the Indictment, but *dedit vulnus*; and for these Reasons it was quashed.

† *Ex malitia supra cogitata*, So when it was *percussit cum gladio*, but did not say *Felonice*. *Cro. Eliz.* 193.

Without the Word *percussit*, *Dyer* 25. 5 Rep. 112. b. 2 *Cro.* 95. 1 Bulst. 109.

The Stroke was laid to be *super sinistram partem Lateris*, and did not shew in what Part; and this was held certain enough, because 'tis well understood what is meant by the Word *Latus*; but where it was *cum pugione in sinistra parte collis percussit*; this was held ill, for it should have been *Colli*.

So where the Stroke was alledged to be given at *D.* whereof the Plaintiff died at *S.* & *sic apud D.* he killed him; this is impossible. *Noy* 45.

Day.

Then as to the Day, the Indictment was, That the Defendant assaulted the Person on the 12th Day of February at Oxford, *ad tunc* & *ibid.* dans ei a mortal Wound, &c. and that he languished from the 12th *usque ad* 13 Feb. on which 13th Day he died; and so the said R. C. on the 13th Day did kill him: This is impossible, because the Word *usque* excludes the 13th Day. 1 Bulst. 203.

Cro. Eliz. 793.

But where it was, That on the 22d *Januarii*, &c. *percussit* the Person at *B.* dans ei *plagam mortalem*, &c. of which he died the 23d of Feb. following, and so he murdered him, *die*, &c. *prad.* that must refer to the Day last mentioned; for otherwise there being two Days mentioned, it would be incertain to which it should relate, *viz.* either to the Day of the Stroke, or Death.

After the Beating or Hurting another, to make it Murder or Manslaughter, the Day and the Year must be reckoned from the Stroke given, but an Appeal hath Relation to the Death.

1 Lev. 116. But to return to the Word (*Murder*) as above defined, we may examine, *viz.* 1. What is a Killing.

And

And this may be by several Means, as by

{	Bruising, Crushing, Famishing, Poisoning, Shooting,
---	---

	Smothering, Strangling, Weapon, and other Ways.
--	---

1. What is
a Killing.

As by laying a Sick Man in the Cold, hiding an Infant under Leaves or Trees, which is afterwards destroyed by Vermin; stirring up a Dog, or any other Beast accustomed to bite or do Mischief, knowing it to be such.

Must be *in Rerum Natura*; for if a Woman take Poison to destroy the Child within her, being Quick, 'tis not Felony, but a great Misprision, unless born, and afterwards dies through this Occasion. 2. The Person killed.

Advising to destroy it before born, and afterwards 'tis born and destroyed, the Adviser is Accessary.

Wounded and dying beyond Sea, the Offender cannot be punished at Common Law, but may before the Constable and Marshal. 3. Within the Realm.
Wounding and dying upon the Sea, before the Admiral of England, by Vertue of the Statute of 22 H. 8. cap. 13.

Striking on the Sea and dying *infra Corpus Comitatus*, is an Offence, which my Lord Hale tells us is not punishable, *H. P. C. fol. 54.* and yet 'tis not denied but that the Killing shall have Relation to the Death, and not to the Stroke. *4 Rep. 41.*

Striking in one County, and the Person dieth in another, the Trial shall be where he died.

But Accessary in one County to a Murder done in another, when the Principal is convicted, and that is certified, may be tried in the County where Accessary. *H. P. C. 54.*

This is Two-fold, { Implied.
 { Express.

4. Malice
fore-
thought.

Malice implied, may be collected several Ways:

- (1.) From the Manner of the Fact.
- (2.) From the Person killed.
- (3.) From the Person killing.

By wilful Poisoning; by riding into a Fair with an unruly Horse, knowing him to be so, on purpose to do Mischief, and Death ensues. *Moor 754.* From the Manner of the Act done.

Throwing a Stone over an House amongst a Multitude of People.

These and such like are unlawful Acts; and it appears plainly, that the Person had an evil Intention of doing Hurt to some Body, though not against any Person in particular; and this implies Malice.

A Smith struck his Servant with an Iron Bar, and killed him. So if a Father corrects his Son, or a School-master his Scholar, with

with such Instruments as may probably kill them, and Death ensues, 'tis Murder.

So if a Smith runs a hot Iron into his Servant's Belly, or a Mother kicks and stamps on her Child's Belly, and Death ensues; in all these Cases 'tis Murder, and the Law supplieth the Malice in Persons who are guilty.

*Regina
versus
Maw-
gridge.*

But in a late Case, we are told, That if a Man assaults another with a dangerous Weapon, but without any Provocation, 'tis express Malice from the Nature of the Fact, which is cruel.

Two Men were beating another in the Street, and a Stranger passing by, said, It was a shame for Two to beat One; whereupon one of them ran to the Stranger in a furious Manner, and with a Knife which he held in his Right Hand, gave him a mortal Wound, of which he died, and both the other being indicted at the Sessions in the *Old Baily*, 9 *Geo.* as Principals in the said Murder; the Judges who were then present, were of Opinion, that one of them could be neither principal or accessory to the Murder, because it did not appear that he intended any Injury to the Person who was killed: 'Tis true, both of them were doing an unlawful Act, but the Death of the Party did not ensue upon that Act, so one was acquitted and the other found guilty of Murder.

Killing without a Provocation.

9 Rep. 67. Such a Provocation as must extenuate the Killing from Mur-
3 Cro. 779. der to Manslaughter, must be where there is some actual Violence or Striking; for Words alone are no manner of Provocation, tho' they are never so opprobrious, nor any affronting Gestures, tho' never so reproachful.

But if angry Words pass between two Persons, and then one pulls the other by the Nose, or fillips him with his Finger, and the Person thus assaulted kills the other with a Sword; this is but Manslaughter, because the Peace was broken by the Deceased, and with a great Affront to him upon whom he made the Assault.

And here it may not be improper to mention *Mawgridge's* Case:

He threw a Bottle at Mr. *Cope*, which struck him on the Head, and immediately drew his Sword and gave him a mortal Wound; but between the Time of drawing the Sword and giving the Wound, Mr. *Cope* threw another Bottle at *Mawgridge*, with which he broke his Head, but Mr. *Cope* had no Sword drawn, and never spoke a Word afterwards; this was adjudged Murder, and of Malice prepensed, for the Throwing the first Bottle was with Design to do Mischief, and the Drawing his Sword was to prosecute that Design; and though Mr.

Cope

Cope threw another Bottle at *Mauwgridge* before the Wound was given, that will not alter the Case, for it was justifiable in him, and in his own Defence.

If two Men fall out, and give each other foul Words, and a third Person strikes one of them and kills him, this is Murder.

So if *A.* assaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his Sword in his own Defence, and is killed by *A.* 'tis Murder.

But if two Men fight, and another Person coming to assist one of them killeth the other, this is Manslaughter, because there was an actual Fighting, and Striving with Violence between the other two.

Yet if a Man is unduly arrested or deprived of his Liberty, and makes no Resistance, and another rescuing him kills a Man, this is Murder, for Injuries must not be redressed by Force. *Kelynge* 60, 61.

If one who is wounded neglects his Cure, or lives disorderly; yet if he die of those Wounds, 'tis Murder or Manslaughter, as the Case shall appear upon the Evidence against the Criminal, because the Wounds were the principal Cause of the Death which ensued. *Kelynge* 26.

Stabbed without Weapon drawn, Malice is implied. 1 *Jac. c. 8.* From the

Five Years after the making this Statute it was held, That Person killed. if the Person killed had a Stick in his Hand, it shall be accounted a Weapon drawn. *Godb. 154.*

And since that Time there have been many nice Expositions of this Law, the Words are, *viz.* Stabbing another that hath not then any Weapon drawn, or that hath not then first stricken the Party which stabs, and the Person dying within six Months then next following, this is Murder, and without Clergy. There is a Proviso, That the Act shall not extend to one who kills another *Se Defendendo*, or by Misfortune; nor to one who in keeping the Peace, or chastizing his Servant or Child, shall unwillingly commit Manslaughter.

Anno 9 Car. 1. One *Byard* struck *Ward*, who struck again, *Jones* 340. and then *Byard* stabbed the other with a Knife; the Question was, Whether he should have his Clergy, because he was struck by the other before he stabbed him? And adjudged he should not, because the Words *first stricken* in the Statute shall be construed the very first Stroke given by the Party slain at the Beginning of the Quarrel, and not any Stroke before the Stab.

So where two quarrel, one throws a Pot at the other, which missing him, the other drew his Sword and killed him: and being indicted on the Statute of Stabbing, the Matter was found Specially, and the Doubt did arise upon the Words of the Statute, *viz.* He that stabs another, not having a Weapon then drawn, &c. whether the Particle then should relate to the Beginning of the Quarrel, or to the Time of the Stroke given?

And

And by the better Opinion, it was held to extend to the Quarrel; for if in fighting one lets his Sword fall, or throws it at another, and is then killed, 'tis plain he had not then a Weapon, viz. at the Time of the Wound given; but yet, because it was once drawn during the Quarrel, the Prisoner shall not be excluded his Clergy. 3 *Levinz* 255.

Anno 15 Car. One *David Williams*, walking on *St. David's Day* with a Leek in his Hat, was jeered by a Porter, and thereupon *Williams* took a Hammer out of *Marbury's* Shop, and threw it at the Porter, with an Intention to hit him, but he missed the Porter and struck *Marbury*, of which he died; the Question was, Whether this was within the Statute of Stabbing, for *Marbury* had no *Weapon drawn*? And adjudged, that it was not. There is no Reason given for this Judgment by *Justice Jones*, who reports the Case; but I suppose it might be, because *Williams* had no Anger or Displeasure against *Marbury*, and so was within the Proviso of the Statute, which exempts any killing by *Misfortune*, as this seemed to be.

But it seems *Williams* was not indicted for Murder, but for Manlaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found guilty, for the Provocation was not so great as to excite him to kill another. *Kelynge*, 133.

Allen 44. If the Indictment is, That *R.* stabbed the Person, and that *P.* and *H.* were present and abetting, and they are all found guilty, *R.* shall be hanged, but the other Persons shall have their Clergy; and if it can be known who gave the Stab, then though in Judgment of Law all those who were present and abetting are Principals, yet the Statute being so penal, ought to be extended only to him *who actually stabbed* the other.

Officers. Constable killed, or any assisting him in Execution of his Office; the like of any other Magistrate.

This is Murder, but then you must know he was Constable, and coming to keep the Peace, and for that Purpose he ought to command them in the King's Name to keep the Peace; otherwise 'tis but Manlaughter in him that kills him.

1 Cro. 132. Officer killed in the Execution of a lawful Warrant, tho' he doth not shew it, being demanded, and tho' there is a Mistake or Error in the Process; but then he must be doing what is warranted by Law, for if he open a Window to arrest, &c. and is killed, 'tis only Manlaughter. *March* 3.

Cro. Car. 372. An Officer had a Warrant to arrest *Sir H. Ferrars, Knight*, but he was a *Baronet*, and never Knighted, and the Officer was killed in executing his Warrant; this was held to be Manlaughter, because he had no Authority to arrest the *Baronet*, and so his Warrant was illegal.

Sid. 160. All who are present and assisting a Person arrested, knowing of the Arrest, are principal Murderers, if the Officer is killed.

A Collector of the Chimney-Money distrained a Silver Cup, the Maid Servant, in the Absence of the Master, hinder'd him from going out, for which he beat her against the Post and killed her; this was held to be Manslaughter. 1 Vent. 216.

Several come to rob a Park, one kills the Keeper, 'tis Murder in the other, if in the same Park, tho' at a Distance when the Fact was done, because their Entry was unlawful, and from thence Malice may be implied. Jones 429.
2 Rol. Rep.
120.
Moor 86. *Palm. 35.*

Several Owlers had loaded Wool to transport it, the King's Officers opposed them in the Night, one of the Owlers shot out of a Fuzee and killed one of his own Company; this was held by all the Judges to be no Murder, because it was not found that he discharged the Gun against the King's Officers, though it might be reasonably intended he did, because he was armed, and in Prosecution of an unlawful Act, in which he was obstructed; and in such Case, if he had killed one of his own Party, though by Accident, it had been Murder in him, but not in the Rest, unless they knew his Design was to kill the Man.

One assaults another with an Intention to rob him, and being resisted, kills the Person he assaulted, 'tis Murder. From the
Person killed.

If a Gaoler by hard Usage kills a Prisoner, like Offence.

Executing of Martial Law in Time of Peace, is Murder.

Malice may be collected out of Circumstances, shewing the Temper of the Person killing.

As if two fight in a Tavern and are parted, and one of them alledgeth the Inconveniency of that Place to fight in, and they appoint another Place and fight presently, where one is killed; 'tis Murder, because Reason had so much the Mastery of his Passion, as to judge of the Conveniency of the Place. *Sid. 277. 1 Bulst. 86. 3 Bulst. 171.*

If two fall out in the Morning, and fight in the Afternoon, and one is killed, 'tis Murder, for there being Time to allay the Heat, the second Meeting must be in Malice.

Yet * Mr. Dalton tells us, if one wound the other, and afterwards they meet, and the wounded Man kills the other, 'tis Murder in him, for Malice shall be intended upon his former Hurt; but if the other kill the wounded Man, 'tis only Manslaughter in him, because it shall be intended his Malice was appeased by giving the Wound; which is very nice. * Dalton.
345.
Lamb 251.
238.

But some Provocations are so violent, that they mitigate the Crime; as where two Boys fought near their Father's House, and one being bloody, complained to his Father, who was then a Mile off, but he went and beat the Boy so, that he died; 'tis not Murder. *Godb. 182. 2 Cro. 296.*

Upon an Indictment for Murder the Jury found that the Defendant Manning caught his Wife in the Act of Adultery with the Person slain, and that he immediately flung a Joint Stool at him, and with the same killed him; adjudged only Manslaughter,

slaughter, and he was gently burnt in the Hand, for there could not be a greater Provocation.

- 3 Mod. 68. *Dangerfield* was convicted for publishing a Libel against the King, and was sentenced to pay 500 l. and to be whipt from *Algate* to *Tyburn* on *Thursday*, and from *Newgate* to *Tyburn* on the next *Saturday*, which was done; and as he returned in a Coach from *Tyburn*, some Words passed between him and one *Frances*, who run him into the Eye with a small Cane, of which Wound he died on the *Monday* following, and *Frances* was indicted and convicted of Murder and executed.

Malice exprefs may appear,

In the Principal who doth the Act. 1 Rol. Rep. 363. As if a Man is resolved to do an unlawful Act, as to rob an Orchard, and Death ensueth, 'tis Murder. Malice between two, they fight, though the Deceased give the first Stroke, 'tis Murder in the other. 1 Bulst. 86. 3 Bulst. 171, 172.

If the Deceased challengeth another, who refuseth to fight, but afterwards upon Importunity meeteth and kills him, 'tis Murder.

All who are present and assisting, are Principals. Sid. 160.

If they are not present, yet if they come to do an unlawful Act, and are in the same House or Place, tho' at a Distance, 'tis Murder in them.

In a Riot at *May-Fair* a Constable was killed, and not known by whom: *A.* was indicted for it, and acquitted, *B. C. D.* and *E.* were indicted as Persons present, *assisting, aiding and abetting* him therein; it was proved that *E.* first drew his Sword, and with several others assaulted the Constables, and that the Riot continued for an Hour or more; it was held in this Case, that upon Proof of a Murder done *E.* is a Principal, for he begun the Riot, which continuing till a Murder was committed, he is a Principal Murderer, tho' he did not the Fact.

Jones 198.
Palm. 547.

Tho' Death be not intended, if the Act be deliberate and malicious, and Death ensueth, 'tis Murder: As the Keeper of a Park finding a Boy stealing Wood, tied him to a Horse's Tail, which in running away killed the Boy; this was Murder, because a deliberate Act. *Cro. Car. Holloway's Case*, 131.

Malice intended to one, and Death of another ensueth.

Malice between two, the one striketh at the other and kills a third Person, 'tis Murder; and if no Malice between them, 'tis Manslaughter.

Malice between two, and the one assaulting the other, kills his Servant coming to his Defence, Murder. *Dyer* 128. b.

One buys Poison to kill another, and a third Person eats it and dies, Murder. *Plowd. Com.* 473, 476.

Two or more come to do an unlawful Act, one of them kills a Man 'tis Murder in both, if abetting or ready to abet, though but looking on. Principals in the second Degree. Aid.

But then the Abettor must know the malicious Design of the other, and the Killing must be in Pursuance of that unlawful Act, and not collateral to it. ing and Abetting.

And not only so, but it must be done deliberately; for if it is upon a sudden Affray, and Death ensues, 'tis but Manslaughter.

Besides, the unlawful Act ought to be such which tends to the Hurt of another, either immediately, or by Consequence; as if Persons assemble in a riotous Manner with offensive Weapons, and one is killed, 'tis Murder.

In a special Verdict on an Indictment at Common Law and the Statute of Stabbing, for Murder, the Case was, The Deceased was a Gardener, his Master sent for the Key of the Garden-Door, which he refused to deliver; thereupon the Master fetched his Sword which lay in the next Room, and expostulated with the Gardener about Delivery of the Key, who giving a rude Answer, the Master struck him on the Head with his Sword, and he having a Scythe in his Hand struck at his Master, who killed him with his Sword; it was insisted, though Death might not be intended at first, yet the Master being doing an unlawful Act, and Death ensuing, the Law implies *Malice*; that a *Sword* was not a proper Weapon to correct a Servant, therefore the Act was unlawful, and the ill Event shall be coupled to the Act, and the Servant's Striking the Master was after the unlawful Act, and in his own Defence; but adjudged that the Law will not imply *Malice*, unless the unlawful Act it self extended to Death, for every Trespass is an unlawful Act, but if Death ensues it will not be Murder; it is an unlawful Act to fight a *Duel*, but yet if two fall out and presently fight, and one is killed, it is *Manslaughter*; besides the unlawful Act must not only extend to Death, but it must be voluntary and done *sedato animo*; for if it was involuntary and in Passion, 'tis not material who was the first Aggressor. 5 Mod. 287.

Two having Malice fight, the Servant of one of them not knowing the Malice, &c. killeth the other; this is Murder in Master, and Manslaughter in the Servant.

One commands another to kill a third Person with a Gun, he kills him, not by Shooting, but with a Sword; 'tis Murder in the Person commanding. In the Accessary before the Fact.

But if by Mistake he kills another Person, 'tis Murder in him killing, and the Person commanding is not so much as Accessary to it.

If one command another only to beat a third Person, and upon this Beating Death ensue, 'tis Murder in the Person commanded,

commanded, to which he who commanded is likewise Accessary, because Death ensued upon that unlawful Act of Beating.

In the War with *France*, Mr. *Mansell* seized some *French* Goods at Sea, and brought them Home, and one *Herbert* pretending to be Deputy-Admiral, came with Force to Mr. *Mansell's* House, and assaulted those who kept Possession of the Goods; a Gentlewoman came to the Door without any Weapon, and was killed with a Stone, which was thrown by Mr. *Herbert's* Servant at another; and it was held, that this was Murder in Mr. *Herbert* and all his Company, for the Person was killed in Defence of the Possession of the House, and that made it Murder, though there was no Malice prepensed. Serjeant *Moor*, who reports this Case, says, That the Person killed was Aunt to both the Gentlemen, and perswaded them to be Friends. *Moor* 87. *Dyer* 128 b.

Het. 126. The Judgment in Murder must be the common and ordinary Judgment allowed by Law; and it cannot be, that the Offender shall be hanged in Chains, tho' for a notorious Murder, as for stabbing the Duke of *Buckingham* by F. but when he is dead, the Body is at the King's Disposal.

See in Ap. By the Statute of 24 H. 8. cap. 5. 'tis enacted, That if any Person should be indicted for the Death of another attempting to murder, rob, or commit Burglary, and 'tis so found by Verdict, he shall forfeit no Lands or Goods, but shall be acquitted. A Man in the Night-time attempted to break open the Door of a Dwelling-house, and one who was only a Lodger would have dissuaded him from him, who thereupon broke the Window, and thrust his Rapier at the Lodger, who with a Spit wounded the Rogue in the Eye, of which Wound he died; this was held not to be Felony, but excusable by this Statute, tho' it was done by a Lodger, and not by the Master of the House in Defence of his Possession.

Cro. Car. 541.

I shall add one Case more to this Title, but 'tis a very strange one, viz. Husband and Wife had lived many Years together, and became very poor; the Man told his Wife, He was very weary of living, and that he would kill himself, the Woman replied, She would die with him: Thereupon he desired her to buy Rats-bane, and they should put it into Ale, and drink it together; she bought it and put it into the Cup, and both drank. The Wife considering what she had done, took Sallet Oil, and expelled the Poison by Vomiting, and recovered; and the Man died. The Question was, Whether this was Murder in the Wife? I do not find it was resolved. *Moor* 754.

By a Statute made in the Reign of King *James* I. it is declared, That where a Bastard-Child shall be concealed, it shall be taken to be born alive; and if it is dead, it shall be adjudged to be murdered; so that by this Statute, Concealment of the

the Birth of a Bastard is made the Crime. Now if a Woman is with Child of a Bastard, and going well to Bed, is taken with Travelling Pains in the Night, and knocks for some Body to assist her, but is delivered without any Help, and then puts the Child in a Trunk, and conceals it for a Day; if there was no Sign of any Hurt upon the Body of the Child, 'tis not Murder within that Statute, because at first there was no Intent to conceal it; and there being no visible Sign of Hurt, it shall be intended the Child was dead born; but if there had been an Intent to conceal it, then 'tis Murder, though the Child was not born alive.

So that the Concealment being by the Statute made an Evidence of the Murder, the Indictment may be *Quod infantem masculum vivum parturit qui quidem infans masculus adtunc & ibidem vivus existens natus per legem hujus Regni Anglie spurius fuit*, (*Anglice*, a Bastard) and so on in the ordinary Form; and conclude, *contra Pacem*, and not *contra formam Statuti*: For the Statute doth not make any new Offence, but declares what shall be Evidence of the Murder. *Kelynge 31.*

Where a Person is found guilty of Murder upon the *Coroner's Inquest*, B. R. may bail him, because the Proceedings before him are upon Depositions in Writing, which may be seen by the Court; but if found guilty by a *Grand Jury* he can not be bailed, because the Court can not know what Evidence they had: This was the Lord *Mobun's Case*. *M. 9 W.*

Neither shall a Man found guilty by the Grand Jury be bailed upon *Affidavits* read of the Evidence, though it is not sufficient to convict him, because this may discourage a Prosecution; for if the Court should give any Opinion of the Evidence upon reading the *Affidavits*, it might be prejudicial to the Prosecutor or Prisoner.

An Indictment for Murder with a Sword.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' p'res Yeoman, Deum p're oculis non habens sed in- Dyer 304.
 stigatione Diaboli motus & seductus sexto die
 Augusti, Anno Regni, &c. circa horam nonam post meridiem in
 nocte ejusdem diei apud H. p'res in Com' p'res vi & armis in
 & super quendam T. P. in pace Dei & dict' Dom' Reg' adtunc
 & ibidem existen' insultum fecit & p'res J. O. cum gladio ad va-
 lentiam trium solidorum quem idem J. O. in manu sua dex-
 tra adtunc & * ibidem extract' habuit & tenuit felonice volun-
 tarie & ex malitia sua p'recogitata p'res T. P. apud H. p'res in
 Com' p'res percussit & vulneravit & eidem T. P. apud H. p'res
 in Com' p'res felonice & ex malitia sua p'recogitata cum gladio
 p'res unum vulnus mortale in & super dextram partem tibiae sue
 I i dedic

* If *Ibidem* had been omitted, the Indictment wou'd have been ill. *He. 35.*

† If he died
presently,
then say,
Instanter
obiit.

* This
Word doth
supply Ex

malitia sua præcogitata. Dyer 68. contra 99, 304. Cro. Eliz. 900. *Murdravit* is necessary in an Indictment, because *Clergy* is not allowed for *Murder*.

dedit longitudinis trium pollicium & profunditatis duorum pollicium de quo quidem vulnere mortali idem T. P. a prædicto sexto die Augusti Anno supradicto usq; nonum diem ejusdem mensis Aug. apud H. p̄ in Com' p̄b languebat & languidus virit quo quidem nono die Augusti Anno supradicto prædicto T. P. apud H. prædicto in Com' prædicto de vulnere mortali prædicto † obiit & sic jur' prædicto super Sacramentum suum prædicto dicunt quod prædicto J. O. prædicto nono die Augusti Anno supradicto apud H. prædicto in Com' prædicto prædictum T. P. modo & forma prædicta ex malitia sua præcogitata felonice & voluntarie interfecit & * murtheravit contra pacem dict' Dom' Reg' Cozon' & Dignit' suas.

I find a Case where *Murderavit* instead of *Murdravit*, was held ill; but that *Burgalariter* for *Burglariter* was held good; and the Reason was, That 'tis as good a Word as *Burglariter*: I admit that they are both Words of Art adapted to particular Offences, and both in Sound express the different Crimes; but I can see no Reason why *Murderavit* should not be as good a Word as *Burgalariter*; for in one there is only the Addition of an *e*, and in the other of an *a*: This is a Nicety, which like the Word it self, is to be found no where but amongst the Lawyers.

For Murder with a Gun.

As in the former Precedent to *Insultum fecit*.

Suffex, ff. **E**t quod prædicto J. O. quoddam tormentum (Angl' a Hand-Gun) ad valentiam octo solidor' quod idem J. O. in manibus suis adtunc & ibidem habuit & adtunc & ibidem cum pulvere sulphurato & globulis plumbeis onerat' (Anglice, charged with Gunpowder and Bullet) felonice & voluntarie ex malitia sua præcogitata versus & contra prædictum T. P. adtunc & ibidem exonerabit (Anglice, did discharge) ratione cujus quidem tormenti exonerationis sic ut præfertur onerat' prædicto J. O. prædictum T. P. super dextram Mamillam (Angl' the Right Pap) ipsius T. P. apud H. prædicto in Com' prædicto cum globulis plumbeis prædicto ex tormento prædicto per prædictum J. O. sic ut præfertur exonerat' felonice & voluntarie & ex malitia sua præcogitata percussit penetrabit & vulnerabit & dedit eidem T. P. adtunc & ibidem cum globulis plumbeis prædicto ex tormento prædicto per prædictum J. O. sic ut præfertur onerat' super prædictam dextram Mamillam ipsius T. P. unam plagam mortalem latitudinis, &c. 5 Coke 120.

By breaking the Neck.

Suffex, ff. **J**UR', &c. to Insultum fecit
Et quod pzed' J. O. manus suas circa collum
ipsius T. P. apud H. pzed' in Com' pzed' vic-
lenter, felonice, voluntarie & ex malitia sua pzeogitata posuit
& affixit & pzed' J. O. cum manibus suis pzed' sic ut pzeferitur
circa collum pzed' T. P. adtunc & ibidem violenter & ex malis-
tia sua pzeogitata posuit & affixit pzed' collum pzeferat' T. P. ad-
tunc & ibidem felonice, voluntarie & ex malitia sua pzeogitata
frangebat de qua quidem fractione colli pzed' pzeferat' T. P. ad-
tunc & ibid' apud H. pzed' in Com' pzed' instanter obiit & sic, &c.

Upon the Statute of Stabbing. 1 Jac. cap. 8.

Suffex, ff. **J**UR', &c. quod R. R. nuper de H. in Com' pzed'
Yeoman, Deum pze oculis suis non habens sed,
&c. sexto die Augusti Anno Regni, &c. vi & ar-
mis, &c. apud H. pzed' in Com' pzed' in & super quendam * These
R. O. * in pace Dei & dict' Dom' Reg' adtunc & ibid' erissen' Words
pzed' R. O. non haben' aliquod telum tunc extractum (Anglice must be in;
a Weap on then drawn) nec imprimis percuten' pzed' R. P. for he may
felonice insultum fecit & quod pzed' R. P. cum quodam gladio be a Trai-
ad valentiam quinque solidorum quem ipse idem R. P. in manu fying, and
sua adtunc & ibidem habuit ventrem versus R. O. adtunc & ibi- so lawful
dem felonice percussit & pupugit pzed' R. O. non haben' telum to kill
adtunc extractum & non imprimis percuten' ibid' pzed' R. P. kim. Godb.
& ipse idem R. P. apud H. pzed' in Com' pzed' cum gladio pzed' 64.
unum vulnus mortale pzeferat' R. O. in & super ventrem suum
pzed' dedit latitudinis unius pollicis & profunditat' duorum
pollicium de quo quidem vulnere mortali pzed' R. O. adtunc & † If that
ibidem instanter obiit & sic Jur' pzed' super sacramentum suum Word is
dicunt quod pzeferat' R. P. pzed' R. O. pzeferat' sexto die Au- not in, 'tis
gusti apud H. pzed' in Com' pzed' modo & forma pzed' felonice no more
interfecit & † murtheravit contra pacem dict' Dom' Reg' Cozon' than Ho-
& Dignitat' suas, & contra formam Statut' in hujusmodi casu micide.
edit' & pzevis. Dyer: 61. a.
394. b.

Murder of a Child, by starving it.

Suffex, ff. **J**UR', &c. quod quedam A. P. de H. in Com' pzed'
Spinster, gravida existens cum Infante masculino
& vibo septimo die Augusti Anno Regni, &c. apud H. pzed' in Com' pzed' Infantem vivum pzed' peperit posteaque
scil' eodem die & Anno supradictis Deum pze oculis non has
bens

bens sed instigatione Diaboli mota & seducta vi & armis, &c. apud H. pzed' in Com' pzed' in & super pzedict' Infantem masculum vibum felonice voluntarie & ex malitia sua pzeogitata, insultum fecit dictumque Infantem vibum adtunc & ibidem super terram pzojecit & felonice & voluntarie & ex malitia sua pzeogitata apud H. pzed' in Com' pzed' sustentare & nutrire recusabit & penitus neglerit ratione quarum quidem pzejectionis in terram & reculationis pzed' Infantem vibum nutrire & sustentare pzeat' Infans adtunc & ibidem instanter obiit & sic jur' pzed' dicunt super sacram' suum quod pzed' A. P. Infantem pzed' apud H. pzed' in Com' pzed' pzeat' 7 die Augusti Anno supradicto modo & forma pzed' felonice voluntarie & ex malitia sua pzeogitata interfecit & murdzabit contra pacem, &c.

For Strangling of a Bastard-Child.

Dyer 186.
A good
Precedent.

JUR', &c. As in the former Precedent to the Word Vibum: Clam & secrete e corpore suo vibum parturit qui quidem Infans masculus sic vibus & natus existens per leges hujus Regni Anglie spurius fuit (Anglice, a Bastard) & quod pzed' A. P. Deum pre oculis non habens sed instigatione Diaboli mota & seducta dicto septimo die Augusti Anno supradicto & quam cito Infans pzed' natus fuit vi & armis, &c. apud H. pzed' in Com' pzed' in & super eundem Infantem masculum vibum existen' in pace Dei & dict' Dom' Reg' adtunc & ibidem felonice voluntarie & ex malitia sua pzeogitata insultum fecit & pzed' A. P. eundem Infantem spurium sic vibum existen' felonice voluntarie & ex malitia sua pzeogitat' cum manibus suis circa collum Infantis bibi pzed' fixatis apud H. pzed' in Com' pzed' suffocabat, † de qua quidem suffocatione pzed' Infans spurius adtunc & ibidem instanter obiit & sic, &c. & insuper Jur' pzed' super sacram' suum ulterius dicunt quod E. M. nuper de H. pzed' in Com' pzed' Spinster, 7 die Augusti Anno Regni, &c. ac diversis aliis diebus & vicibus ante feloniam & murdzum pzed' in forma pzed' perpetrat' apud H. pzed' in Com' pzed' malitiose & felonice consuluit pzoicurabit & abettabit pzeat' A. P. murdzum pzed' facere ad interficiend' & murdzand' dictum Infantem contra pacem, &c. insuper quod J. O. de H. pzed' in Com' pzed' & K. O. de eadem Spinster, post murdzum & feloniam pzed' in forma pzed' fact' scientes pzeat' A. P. murdzum & feloniam pzed' fecisse & perpetrasse pzeat' A. P. apud H. pzed' in Com' pzed' nono die Augusti Anno supradicto felonice receperunt contra pacem, &c.

† If the
Preposition
de had been
omitted,
the Indict-
ment had
been ill.
1 Roll. Rep.
135.

Quiter.

Muster.

Muster-Master commanding any Person to muster, and if ^{4 & 5 Ph.} the Person so commanded absents, not having a lawful ^{& M. c. 3.} Excuse; or if he comes, and doth not bring his best Arms, he is to be committed for ten Days without Bail, unless he agree to pay 40 s. as a Fine to the King.

Any Person authoriz'd to muster or levy Soldiers, taking any Reward to discharge or spare any from the Service, forfeits ten Times as much.

A Captain, or other Officer, licensing a Soldier to depart, must pay him Wages then due, and Coat and Conduct-Money, or forfeits ten Times as much between King and Prosecutor, and to the Soldier three Times as much as should be paid to him.

Justices of Peace may hear and determine these Offences, and upon Conviction of the Offender, may commit him without Bail till Forfeiture paid.

He who gives, or procures to be made or given, any *false* ^{3 Georg.} Certificate to excuse a Soldier from a Muster or other Service, ^{cap. 2.} forfeits 50 l. and shall be cashiered, and no Certificate shall excuse a Soldier but for Sickness, or being employed in Recruits or Parties; and the Commissary of the Musters must at the Time of the Muster set down on the Roll, the Reason of the Absence of each Soldier.

Officer making false Muster of Man or Horse, and Commissary, Muster-Master, or other Person signing such Muster-Roll, upon Proof thereof on Oath by two Witnesses, before a Court-Martial, shall be cashiered, and forfeits 100 l.

But fictitious Names allowed by his Majesty's Order upon the Muster-Rolls, for the Maintenance of Officers Widows, shall not be accounted a false Muster.

Muster-Master must upon any Muster give convenient Notice to the Mayor, or other chief Magistrate of the Place where the Soldiers so to be mustered shall be quartered; he neglecting forfeits 50 l. and shall be discharged; and no Muster-Roll shall be allowed, unless signed by the Mayor, &c. who must be present upon Notice given, otherwise the Commissary may proceed to muster without him, upon Oath made before a Justice, of Notice given, within forty-eight Hours afterwards, and producing to the Justice the Roll to be examined by him, who may then sign it.

Any Person falsely mustered, or offering himself to be deceitfully mustered, on Proof thereof on Oath of two Witnesses before the next Justice of the County where the Muster was

made; and on a Certificate thereof under the Hand of the Commissary to the Justice, he shall send such Person to the House of Correction for ten Days, and he from the Time of such false Muster shall be taken to be a listed Soldier.

A Horse lent to be mustered, and not truly belonging to a Trooper, shall be forfeited to the Informer, if 'tis the Horse of the Lender, otherwise he forfeits 20 £ upon Proof of two Witnesses on Oath before one Justice.

The Forfeiture of an Officer is to be paid out of his Arrears upon Conviction before a Court Martial, upon their Order to the Paymaster; and if no Arrears due, then his Goods shall be taken and sold by the like Order; and if no Goods, he shall be sent by the like Order to Gaol for six Months, and the Informer shall have the Forfeiture; and the Soldier shall be discharged, if he desires it,

Mute.

THIS is of two Kinds, $\left\{ \begin{array}{l} 1. \text{ When he answers not.} \\ 2. \text{ When he answers not directly.} \end{array} \right.$

In the one Case it must be enquired, Whether he is mute by the Act of God, or by Malice; if by the Act of God, then you must enquire of the Felony, and whether he is the same Person; if by Malice, then he shall have Judgment, and so he shall if he doth not answer directly.

Dyer 241.

To be mute in Treason, is a Conviction, and shall suffer as a Traitor.

After Attainder, standing mute, must be executed.

In Appeal, must be hang'd.

This must be understood of such Felony for which he is not to have his Clergy, otherwise, if he is mute, he shall have Clergy.

But in Felony 'tis, that the Offender be remanded to Prison, and laid in a low and dark Room naked on the Ground, and on his Back, and his Arms and Legs extended by Cords, and Iron or Stone laid on his Body, something more than he can bear; next Day he shall have three Morsels of Barley-Bread without Drink; the third Day he shall drink thrice of the Water next the Prison, but not Running-Water, and shall have no Bread; and thus he shall be kept till dead, so that he dies *Onere Frigore & Fame*; and besides this, he forfeits his Goods.

Moore 550.

Needle-Mork. See Bone-Lace.

Pets. See Hunting, Partridges, and Pheasants, Dogs, Fish.

News

News.

Contriver, Speaker or Teller of false News, Lies, or other false Things, whereof Discord or Slander may arise, shall be committed till he find out the Author; and if he cannot find him out, then shall he be punished by the Advice of Counsel.

This is appointed by several Statutes which are now of no Force. 3 Ed. 1. cap. 33. 1 & 2 Ph. & M. cap. 3. 1 Eliz. cap. 6. 23 Eliz. cap. 2.

~~News~~ Papers. See Pamphlets.

Night-Walkers.

IF suspected to be of ill Fame, may be apprehended, viz such who sleep by Day, and haunt Bawdy-houses at Night, or keep suspicious Company; these may be compelled to find Sureties for Good Behaviour. 13 H. 7. cap. 10. Poph. 208. Latch. 199.

They may be indicted at the Sessions. Poph. 208. Benl. 199.

Noblemen. See Peers.

NOne are Noble under the Degree of a Baron. A Warrant of the Peace is not to be granted against a Lord of Parliament, nor against a Dutchess, Countess or Baroness, for they have the same Privilege with Dukes, &c.

But this must be understood of those who are Noble by Creation or Birth; for if they are only Noble by Marriage, and the Husband dieth, and then they marry Gentlemen, they lose their Dignity.

Norwich.

NOne shall make Mats, Coverlets or Dornicks, in *Norwich*, unless licensed by two Justices in that City; nor in *Norfolk*, but in Corporate Towns. 5 & 6 Ed. 6. cap. 24.

Norwich Stuffs, per 13 & 14 Car. 2. cap. 5.

In an Information, this Statute was misrecited.

Raym. 192. **I**N Norwich and the County of Norfolk, there must be twelve Wardens and thirty Assistants, who within fourteen Days after they are chosen, and Notice thereof, must take an Oath before the Mayor faithfully to discharge their Office. If they refuse to be sworn, or die afterwards, and before the End of the Year, the Master-Weavers may chuse others.

When they are to be chosen, and by whom. Their Duty when chosen. Half of the Wardens are to be chosen on *Whit-Monday*, by the greater Part of the Master-Weavers in the City then present: Half of the Assistants on the same Day, by the greater Part of the Weavers of the County then present.

Seven of the Wardens and Assistants may meet when they please, or as often as desired by the Assistants.

1. Concerning their Meeting. Wardens of the City must give personal Notice to two of those in the County when they intend to meet, by setting such Notice upon the Door of their Sealing-Hall, 14 Days before.

2. Concerning their Searching. Two of them may search in the publick Places for Sale, and seize defective Yarns, and within 20 Days afterwards bring them to a Trial by Jury, which may impose Fines on the Yarns, not exceeding half the Value, to the Use of the Poor of the Trade.

3. Power to make By-Laws. Which being confirmed by the Mayor and two Justices of the City, and three of the County (*Quorum unus*) shall be published four Times in a Year, at four Assemblies for Trade, and may impose Fines, not exceeding 10 s. for every Offence.

Punishment of those who disturb them. Being convicted by Oath of one Witness, or by his own Confession, before the Mayor or a Justice of the Peace of the City or County, forfeits 40 s.

When they are to account. At their four Assemblies for Trade, they are to account before the Mayor and one Justice of the City, and two of the County, for what Fines and Forfeitures they have received, and what they have laid out concerning the Trade, and what remains by the said Mayor and Justices, to be divided, as they shall direct, between the Poor of the Trade of the City and County.

Jury, how to be impanelled. They must be twelve Artificers, half of the City, and half of the County; they must be impanelled by Precept from the Mayor or Deputy; and if any being summoned refused to appear, forfeits 5 s. to the Poor of the Trade.

Stuffs, sealing them. All Stuffs, in which there is Wool, must be under the Regulation of Wardens and Assistants, and must be brought to Weavers-

Weavers-Hall in *Norwich* before they are exposed to Sale: and if found good, then sealed; if defective, they must be tried by a Jury, &c. who may set Fines not exceeding half the Value of the Stuffs, for the Use of the Poor of the Trade, and detain them till paid, and sell them, if not paid within forty Days after Trial.

They in whose Possession unsealed Stuffs shall be found, forfeit 40 s. per Piece, and the Maker or Seller 4 s. for selling them unsealed, to the Use of the Poor of the Trade.

If Wardens seal Stuffs which shall be found defective by Jury, such Jury may set Fines on the Wardens of 40 s. for every Stuff; but Wardens shall have double Damages for unjust Vexation.

Persons convicted before the Mayor or a Justice of the City or County, by Confession or Oath of two Witnesses, of counterfeiting the Seal, or sealing therewith, or removing the Seal from one Piece to another, forfeit 20 l.

Every Person must have his proper Mark upon every Piece by him made, or forfeits 3 s. per Piece to the Poor of the Trade.

Are to be levied by Distress, &c. by Warrant from Mayor or Justice, or by Action of Debt, Indictment or Information.

Must be reeled on a Reel of a Yard about, and every Reel-Stuff must have Lees———14.

Forfeitures
&c.
Yarns.
Worsted.

Nusance. See Highways.

MEN may meet in a peaceable Manner, and with proper Instruments to remove a *Nusance*, but not in greater Numbers than are needful for that Purpose.

Upon an Indictment for a *Nusance*, the Court never admits the Person to a small Fine 'till 'tis removed, and *Affidavit* made thereof, or else certified by two Justices.

Neither ought the Defendant to take any Exceptions to the Indictment till he hath pleaded to it.

Nusances are of several Kinds; I shall instance of some, viz. 'Tis a *Nusance* to erect a Gate cross a Highway, tho' the Gate is easy to be opened; any Man may break it or cut it. *Cro. Car.* 185. So 'tis to erect a Dam on his own Land, and Part of it on another Man's Land, and therefore the other Person may pull his Part down, tho' the Owner's Part fall. These Offences are punishable in the Leet, yet stopping a Way to a Common, is a *Nusance*, for which an Action on the Case lieth though the Inheritance should come in Question. 3 *Cro.* 845.

Daks. See Wood and Leather.

Daths.

Oaths.

AN Oath is an Affirmation or Denial of any Thing before one or more, who have Authority to give the same, for the Advancement of Truth and Right, calling God to Witness that the Testimony is true; and 'tis called a Corporal Oath, because he toucheth the Scripture with his Hand.

There were four Sorts of Oaths required of Subjects, to testify their Allegiance to the King.

The First was an Oath at Common Law, taken in the Court-Leet.

The Second was by Act of Parliament. 28 H. 8. *cap.* 7. which concerned the Supremacy.

The Third was *per Statute* 1 Eliz. *cap.* 1. which altered the Oath of Supremacy.

The Fourth was the Oath of Allegiance, *per Stat.* 3 & 4 Jac. and upon this last Act the Lord Vaux was indicted, he refusing to take the Oath, and being convicted on his own Confession, had Judgment of *Premunire*.

If an Oath be taken before a Magistrate who hath no Authority to administer, 'tis void; but if it is voluntary and false, the Offender was punish'd formerly in the *Star-Chamber*; and if it is in a Spiritual Matter, *viz.* If a Woman swear to marry a Man, and doth not, she may be punished in the Ecclesiastical Court *pro latione Fidei*. Cro. Eliz. 469. *Knight versus Rushworth*.

Peers are sworn as Witnesses, in *Furamentum probationis*: But when they are Defendants, they answer upon their Honour. Jones 154. the Earl of Lincoln's Case.

The Oaths of Allegiance and Supremacy were enjoined by 1 Eliz. and 3 Jac. but are now abrogated by the Statute of 1 W. & M. *cap.* 8. and these Oaths enjoined.

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King GEORGE.

So help me God.

I A. B. do swear, That I do from my Heart abhor, detest, and abjure, as Impious and Heretical, that damnable Doctrine and Position, That Princes excommunicated and deprived by the Pope, or any Authority of the See of Rome, may be deposed by their Subjects, or any other whatsoever: And I do declare, That no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm.

So help me God.

Two or more Justices, *Quorum unus*, may send Warrants to Constables to summon any above eighteen Years to take the said

said Oaths, which being lawfully tendered, and refused, the Offender may be committed to Gaol, or House of Correction for three Months without Bail, unless he pay 40 s. or any lesser Sum the Person tendering shall think fit, to the Use of the Poor where the Offender did last reside.

If after the End of three Months he still refuse, he shall be committed for six Months, unless he pay 5 l. and under 10 l. and must be bound with two Sureties to be of the Good Behaviour, and to appear at next Assizes, and there the Oath shall be tendered again in open Court, and if he refuse, &c. shall be incapable of any Office, and be of Good Behaviour till he takes the Oaths.

And if he refuse to subscribe the Declaration mentioned in the Statute of 30 Car. 2. cap. 1. shall be taken to be a Popish Recusant.

By 7 & 8 Will. cap. 27. If after 1 May. 1696. any refuse to take the said Oaths when tendered, or to appear when summoned, shall be liable to the Penalties of a Popish Recusant Convict.

Shall not give a Vote at the Election of Members for Parliament.

May mitigate the Penalty of 40 s. per 1 Will.

By 7 & 8 W. upon Refusal to swear, or to appear upon Summons, the Justice must enter in Parchment the Names and tendering Abodes of the Persons, &c. with the Time of the Tender, and certify it to Assizes or Sessions, who may certify it to the Exchequer, who may issue Process against Goods and Lands of the Offender.

By the same Statute, it is a *Premunire* for any Lawyers to Lawyers. practise after 25 May 1696. not having before taken the Oaths, and made and subscribed this Declaration.

I A. B. do declare, That I do believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Element of Bread and Wine, at or after the Consecration thereof by any Person whatsoever. 15 Car. 2. cap. 2.

Lords Spiritual and Temporal must not sit or vote before Parliament they take the said Oaths, and make and subscribe the Declaration mentioned 50 Car. 2. cap. 1. 1 Will. & Ma. c. 1.

Two Justices out of the Sessions may tender those Oaths to any Person of 18 Years of Age or upwards, who stands convicted or indicted of *Recusancy*, or to those who have not received the Sacrament twice in the Year before, &c. 3 Jac. cap. 4.

And now by a late Statute 'tis provided, That any two Justices of the Peace (*Quorum unus*) may summon before them such Persons whom they shall suspect to be disaffected to the Government, and may tender the following Oath to him; and if he refuse to take it, then they must certify his Christian and

and Surname, and Place of Abode, to the next Quarter-Sessions, there to be recorded; which Record the Clerk of the Peace shall certify, either to the Court of *Chancery* or *Queen's Bench*, and there likewise to be recorded; and if the Person so refusing shall not at the next Term or Sessions, after such Refusal, appear in that Court where the Certificate shall be returned, and take and subscribe the said Oath, he shall be adjudged a Popish Recusant Convict, and shall forfeit such Penalties as such a Recusant ought to do. Which Act with Respect to *Scotland*, &c. was afterwards enlarged and explained by 8 *Anna*, cap. 14.

1 Georg.
cap. 15.

And by another Statute all Persons who shall be admitted into any Office, Civil or Military, shall within three Months take and subscribe the Oaths in one of the Courts at *Westminster*, or at the Quarter-Sessions where he resides.

And Persons beyond Sea are to take the Oaths within three Months after their Return.

Persons refusing, &c. shall be adjudged incapable to enjoy their Offices, and the same shall be void.

Such Person neglecting, &c. and yet executing any Office by himself or Deputy, and being thereof convicted, shall be disabled to sue, &c. or to be Guardian or Executor, or capable of any Legacy, or to vote for a Member to Parliament, and forfeits 500 l.

Any two Justices, or other Persons specially appointed by Order of Council or by Commission under the great Seal, may tender the Oaths to any Person suspected to be disaffected; and if they refuse, may certify the Refusal to the next Quarter-Sessions, which from thence shall be certified by the Clerk of the Peace into the Court of *Chancery*, there to be recorded; and such Person shall be adjudged a Popish Recusant Convict.

Two Justices may summon any Person to appear at a Day and Time appointed to take the Oaths, (the Summons to be left at his Dwelling-house) and he not appearing, and Oath made of the Summons, the Justices shall certify it to the Sessions; and if he doth not appear then and take the Oaths, his Name shall be read, and he shall be taken to be a Popish Recusant Convict, and it shall be certified by the Clerk of the Peace into *Chancery*.

The Oath to be taken by every Person who shall be admitted to any Office, Civil or Military, within three Months after his Admittance, &c.

I W. N. do truly and sincerely Acknowledge, Profess, Testify and Declare in my Conscience, before God and the World, That our Sovereign Lord King George, is lawful and rightful King of this Realm, and of all other his Majesty's Dominions, and Countries thereunto belonging, &c.

A Cer-

A Certificate for one who hath taken the Oaths, and subscribed the Declaration. 1 Will. &c. cap. 8.

Middl' ff. **T**Hese are to certify, That R. B. of the Parish of H. in the County aforesaid, Esq; came before his Majesty's Justices of the Peace at the Sessions held at H. &c. on Thursday, &c. and then and there before the said Justices at the said Sessions, did take the Oaths mentioned in a Statute made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths; and did likewise then and there make and subscribe the Declaration mentioned in a Statute made in the 25th Year of the Reign of the late King Charles the Second, Entituled, An Act for preventing Dangers which may happen from Popish Recusants; and that what he did then and there concerning the Premises, is registred according to the Direction of the Act first above-mentioned. Signed, &c. Dated, &c.

Mittimus for refusing, &c. and not paying the 40 s.

To the Keeper, &c.

Suffex, ff. **W**E H. P. and W. N. two of his Majesty's Justices of the Peace for the County aforesaid, whereof one is of the Quorum, do, by this our Warrant, commit to your Custody the Body of J. O. of, &c. for refusing to take the Oaths mentioned in a Statute made in the first Year of the Reign of the late King William and Queen Mary, Entituled, An Act for abrogating, &c. which said Oaths were lawfully tendered to the said J. O. and for that he hath refused to pay the Sum of 40 s. to the Poor of the Parish of H. where the said J. O. did last reside, according as appointed by the said Act; Requiring you the said Keeper to receive the said J. O. into your Custody, and him safely to keep without Bail or Mainprize, for the Space of three Months; and for so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

Dissenters are bound to take the Oaths above-mentioned, and to subscribe the Declaration mentioned. 30 Car. 2.

Justices in Sessions are to tender and administer the Oaths to Persons that shall offer themselves.

Those Dissenters who scruple taking any Oaths, must make and subscribe a Declaration of Fidelity, and likewise a Profession of their Belief. 1 Will. & M. cap. 18.

The Declaration of Fidelity.

I A. B. do sincerely promise, and solemnly declare before God and the World, That I will be true and faithful to King George, and I do solemnly profess and declare, That I do from my Heart abhor, detest

Oaths.

detest and renounce as impious and heretical, that damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever: And I do declare, That no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Power, Jurisdiction, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm.

The Profession of Belief.

I A. G. profess Faith in God the Father, and in Jesus Christ the Eternal Son, the true God, and the Holy Spirit, one God blessed for evermore, and do acknowledge the Holy Scriptures of the Old and New Testament, to be given by Divine Inspiration.

They must likewise make and subscribe the Declaration mentioned in the Statute of 30 Car. 2. cap. 1.

Any Justice of Peace may at any Time require a Dissenter to make and subscribe the Declarations, and to take the Oaths or Declaration of Fidelity. If he scruple the Taking any Oath, upon Refusal, may commit him to Prison, without Bail, and certify his Name in the next Sessions, where he resides.

If the Person committed shall, upon a second Tender at the Sessions, refuse, &c. it shall be recorded, and he shall be then taken for a Popish Recusant Convict.

5 & 6 W. & M. c. 11. Every Contributor having an Annuity for Life or Lives, &c. and his or her Executors demanding Money, must either produce a Certificate of the Life of the *Nominee*, signed by the Minister or Church-wardens of the Parish:

Or make Oath of the Life of such *Nominee* upon the Day of Payment, before one or more Justices of the County, City or Town, where such Person at the Time of the making Oath shall reside.

Forms of
Oaths.

- | | |
|---|---|
| <p>Of {</p> <ol style="list-style-type: none"> 1. Abjuration. 2. Bailiff of a Liberty. 3. Bailiff attending Jury. 4. Clerk of the Peace. 5. Church-warden. 6. Constable High. 7. Constable High, delivering Presentment. 8. Constable Petty. 9. Constable of London, &c. 10. Examination of Witnesses. 11. Excise-man. 12. Information. 13. Inquest Grand. | <p>14 { Jury } Of Crown-side.
Of <i>Nisi prius</i>.
Of Matrons.
On Traversa.</p> <p>15. Justice of Peace.</p> <p>16. Prisoner not worth 10 l.
&c.</p> <p>17. Sewers.</p> <p>18. Under-Sheriff.</p> <p>19. Witnesses, { On an Indictment.
On Crown-side.
On <i>Nisi prius</i>.</p> |
|---|---|

1. Oath

1. Oath of Abjuration.

YOU shall swear that you will depart out of this Realm of England, and out of all other the King's Dominions, and that you shall not return hither or come again in any of his Majesty's Dominions, but by the Licence of his Majesty, his Heirs or Successors.

2. Oath of a Bailiff of a Liberty.

I T. P. do swear, That I will not use or exercise the Office of a ^{27 Eliz. c.} Bailiff of the Liberty of, &c. corruptly, during the Time I shall ^{11. Two} remain therein; neither will I except, receive, or take by any Colour, ^{Justices,} Means or Device whatsoever, or consent to the Taking any Manner of ^{Quorum} Fee or Reward of any Person for impanelling or returning any In- ^{Oaths: W.} quest, Fury, or Tales, in any Court of Record for the King, or be- ^{c. 8. must} tween Party and Party, above 2 s. or the Value thereof, or such Fees ^{also be ta-} which are allowed and appointed for the same by the Lawes and Sta- ^{ken, or he} tutes of this Realm; but will, according to my Power, truly and in- ^{forfeits} differently, with convenient Speed, impanel all Furors, and return all ^{40 l.} such Writ or Writs touching the same, as shall appertain to be done by my Duty or Office, during the Time I shall remain in the said Office.

So help me God.

The Penalty is to be divided between the King and Prosecutor; and Justices in Sessions have Power to hear and determine, and to award Process.

3. Of a Bailiff who attendeth on a Jury.

YOU shall well and truly keep together every Person sworn of this Jury, in some convenient Place, without Meat, Drink, Fire, Candle or Lodging: You shall not suffer any Person to speak unto them until they are agreed in their Verdict.

So help you God.

4. Of a Clerk of the Peace in Sessions, before he enters upon his Office.

I W. W. do swear, That I have not, neither will I, pay any Sum ^{1 W. & M.} or Sums of Money, or other Reward whatsoever, or given any ^{cap. 21.} Bond or other Assurance to pay any Money, Fee or Profit, directly or indirectly, to any Person or Persons whatsoever, for nominating or appointing me to be Clerk of the Peace of the County of S.

So help me God.

5. The Oath of the Church-warden.

YOU shall execute the Office of a Church-warden in the Parish of H. where you are chosen for this ensuing Year, according to your Skill and Discretion in his Majesty's Laws Ecclesiastical now in Force.

So help you God.

6. Of a Constable.

YOU shall well and duly, according to your Knowledge, Power and Ability, execute the Office of a Constable, so long as you shall continue in that Office.

So help you God.

7. Of a High Constable, when he delivers in his Presentments.

YOU shall true Presentment make to the Grand Inquest, of all Offences and Misdemeanors done or committed within your Hundred, and which are in any wise come to your Knowledge, and belonging to you to present, without any Concealment.

So help you God.

8. Of a Petty Constable or Headborough.

YOU shall swear well and truly to execute the Office of a Constable for the Parish of H. for the next Year ensuing, and until another shall be sworn in your Room, or until you shall be lawfully discharged from the said Office.

So help you God.

9. Of a London Constable.

YOU shall swear to keep the Peace of the King, according to your Power; and you shall arrest all them who make any Contest, Riot or Affray, in the Breaking the said Peace, and commit them to the Compter of one of the Sheriffs; and if you are withstood by Strength of Misdoers, you shall raise on them an Out-cry, and pursue them from Street to Street, and from Ward to Ward, till they be arrested, and you shall search, when required by the Scavengers or Beadles, for common Nuisances of your Ward; and you shall help the Beadle and Raker to collect the Salary, if you be thereunto required; and if any Thing be done within your Ward against the Ordinances of this City, such Defaults as you shall find there done, you shall present

present to the Lord Mayor and other Magistrates thereof; and if you are bindred by any Person in the Execution of your Office, you shall certify the Name or Names of him or them so doing to the Lord Mayor of this City; you shall also, during the Time you shall be in the Office and Place of a Constable, once at least for every Month, certify and shew to one of the Clerks of the Mayor's Court, as well the Names and Surnames of all the Freemen within the Parish wherein you inhabit, as the Names and Surnames of all the Children of the said Freemen dying, being Orphans of this City.

So help you God.

Coroner.

YOU shall swear, That you shall truly serve the King and his People in the Office of a Coroner, and as one of his Majesty's Coroners of this County of S. and therein you shall diligently and truly do all Things appertaining to your said Office, according to the best of your Knowledge and Power, both for the King's Profit, and the Good of the Inhabitants within the said County, taking such Fees as you ought by Law.

So help you God.

10. To a Witnesses upon his Examination.

YOU shall true Answer make to all such Matters as shall be demanded of you, concerning, &c. You shall speak the Truth, the whole Truth, and nothing but the Truth.

So help you God.

11. Of an Excise-man and Gauger.

YOU shall swear to execute the Office of, &c. faithfully and truly, without Favour or Affection, and shall make and deliver a true Account from Time to Time, to such Person or Persons as his Majesty shall appoint to receive the same, and shall take no Reward or Fee for Execution of the said Office, from any other Person than from his Majesty, or those whom his Majesty shall appoint in that Behalf.

12 Car. 2. cap. 51. Two Justices; they must certify the Taking this Oath next Sessions.

So help you God.

He must also at the same Time take the Oaths of Allegiance and Supremacy. per 1 Will. & M. cap. 8.

12. An Information against a Criminal.

THE Information which you shall give on the Behalf of our Sovereign Lord the King against J. O. of, &c. shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God.

13. Jury Grand.

YOU, as a Foreman of the Grand Inquest for the Body of this County of S. shall diligently inquire, and true Presentment make, of all such Matters and Things which shall be given to you in Charge. His Majesty's Counsel, your Fellows and your own you shall keep secret; you shall not present any Person for Envy, Hatred or Malice, nor conceal any Truth for Fear, Favour, Affection, Reward, Gain or Hope; but you shall in all Things, to the best of your Skill and Knowledge, present the Truth, the whole Truth, and nothing but the Truth.
So help you God.

The Rest of the Jury by Three.

THE same Oath which J. L. your Foreman hath taken on his Behalf, you and every of you shall well and truly observe and keep on your Parts.

So help you God.

14. Jury of the Crown-Side.

YOU shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, whom you have in your Charge, and a true Verdict give according to your Evidence.

So help you God.

Jury of Nisi Prius.

YOU shall well and truly try this Issue of Nisi prius between the Parties, according to your Evidence.

So help you God.

Jury of Matrons.

YOU the Fore-woman of this Jury shall swear, That you shall search the Prisoner at the Bar, whether she be quick with Child of a living Child; and thereof a true Verdict give according to the best of your Judgment.

So help you God.

Jury on a Traverse.

YOU shall well and truly try this Issue of Traverse between our Sovereign Lord the King and J. O. for a Trespass, whereof he stands indicted, according to your Evidence.

So help you God

15. The

15. The Oath of a Justice of Peace.

YOU shall swear, That as a Justice of the Peace for the County ^{18 Ed. 3.}
of S. in all the Articles in the King's Commission to you directed, you shall do equal Right to the Poor and Rich, after your Cunn-
ing, Wit and Power, and after the Laws and Customs of this Realm,
and Statutes thereof made; you shall not be of Counsel with any Per-
son in any Quarrel depending before you; and that you hold your Ses-
sions after the Form of the Statutes thereof made; and the Issues, Fines
and Amerciaments that shall happen to be made, and all Forfeitures
which shall fall before you, you shall cause to be entred without Con-
cealment or Imbezilling, and truly send them to the King's Exchequer:
You shall not let for Gift or other Cause, but well and truly you shall
do the Office of a Justice of the Peace in that Behalf, and that you
take nothing for your Office of Justice of the Peace to be done, but of
the King, and Fees accustomed, and Costs limited by the Statute:
You shall not direct, nor cause to be directed, any Warrant (by you to
be made) to the Parties, but you shall direct them to the Bailiffs of
the said County, or other the King's Officers or Ministers, or other in-
different Persons to do Execution thereof.

So help you God.

16. Peace, requiring Security thereof

YOU shall swear, That you do not crave the Surety of the Peace
against J. O. for any Hatred or Malice which you bear unto
him, but for Safety of your Person from Harm, and to preserve your
Life, House, Goods and Chattels from Mischief, which you fear he will
do, or procure to be done unto you or them.

So help you God.

17. Oath of a Prisoner not worth 10 l.

I R. B. do upon my Corporal Oath, in the Presence of Almighty God, so- ^{10 A. c. 10.}
lemnly swear, profess and declare, That the † Schedule now deli- † This must
vered, and by me subscribed, doth contain, to the best of my Knowledge be to the
or Remembrance, a full, just, true and perfect Account and Discovery Quarter-
of all the Estate, Goods and Effects unto me any Way belonging, and Sessions.
such Debts as are to me owing, or to any Person in Trust for me; and
of all Securities and Contracts whereby any Money will or may here-
after become payable, or any Benefit or Advantage accrue to me, or to
my Use, or to any other Person or Persons in Trust for me; and that I,
or any other Person in Trust for me, have not Land, Money or Stock,
or any other Estate, real or personal, in Possession, Reversion or Remain-
der, of the Value of 10 l. and that I have not directly or indirectly sold,
lessened,

Oaths.

lessened, or otherwise conveyed, disposed of in Trust, or concealed, all or any Part of my Lands, Money, Goods, Stock, Debts, Securities, Contracts, or Estate, whereby to secure the same; to receive or expect any Profit or Advantage thereof, or to defraud or deceive my Creditors, to whom I am indebted in any wise whatsoever.

So help me God.

18. Oath of a Commissioner of Sewers.

By Dedi-
mus, or
before Ju-
stices in
Sessions.

YOU shall swear, That you to your Cunning, Wit and Power, shall truly and indifferently execute the Authority to you given by this Commission of Sewers, without any Favour or Affection, Corruption, Dread or Malice, to be born to any Person or Persons; and, as the Case shall require, you shall consent, and endeavour your self, for your Part, to the best of your Knowledge and Power, to the Making such wholesome, just, equal and indifferent Laws and Ordinances as shall be made and advised by the most discreet and indifferent Number of your Fellows, being in Commission with you, for the due Redress, Reformation and Amendment of all and every such Things as are contained and specified in the said Commission, and the same Laws and Ordinances, to your Cunning, Wit, and Power, cause to be put in Execution, without Favour, Malice or Affection.

So help you God.

19. The Oath of an Under-Sheriff.

3 Georg.
cap. 15.
The like
Oath for
the High
Sheriff.
*Mutatis
mutandis.*

IR. W. do swear, That I will well and truly serve the King's Majesty in the Office of Under-Sheriff for the County of S. and promote his Majesty's Profit in all Things that belong to the said Office as far as I legally can or may: I will preserve the King's Rights and all that belongeth to the Crown: I will not consent to lessen or decrease, or conceal the King's Rights of his Franchises; and whensoever that I shall have Knowledge that the Rights of the Crown are concealed, or withdrawn, be it in Land, Rents, Franchises, Suits or Services in any other Matter or Thing, I will do my utmost to make them restored to the Crown; and if I may not do it of my self, I will certify and inform some of his Majesty's Judges thereof; I will not respite or delay to levy the King's Debts for any Gift, Promise, Reward or Favour, when I may raise the same without great Grievance to the Debtors; I will do Right as well to Poor as to Rich, in all Things belonging to my Office; I will do no Wrong to any Man for any Gift, Reward or Promise, nor for Favour or Hatred; I will disturb no Man's Right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any Debt or Duties, or Sums of Money belonging to the Crown; I will do nothing whereby the King may lose, or whereby his Right may be disturbed, injured or delayed; I will truly return and truly serve all the King's Writs to the best

Oaths.

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best of my Skill and Knowledge; * I will truly set and return reasonable and due Issues of them that be within my Bailiwick, according to their Estates and Circumstances, and make due Panels of Persons able and sufficient, and not suspected or procured, as is appointed by the Statutes of this Realm; I have not bought, purchased or taken to Farm, or contracted for; nor have I promised or given any Consideration whatsoever by my self, or any other Person for me, or for my Use, directly or indirectly, to any Person or Persons whatsoever, for the Office of Under-Sheriff of the County of S. which I am now to enter on and enjoy, nor for the Profits of the same, nor for any Bailiwick thereof, or any other Place or Office belonging thereunto: I have not sold, contracted for, or let to Farm, nor have I granted, or promised for Reward, or Benefit by my self, or any other Person for me or my Use, directly or indirectly, any Bailiwick thereof, or any other Place or Office belonging thereunto; I will truly and diligently execute the good Laws and Statutes of this Realm, and in all Things well and truly behave my self in my said Office for his Majesty's Advantage, and for the Good of his Subjects, and discharge my whole Duty, according to the best of my Skill and Power.

* These Words are in the Oath of the High Sheriff. viz. no Bailiffs into my Service but such as I will answer for, and will cause each of them to take such Oaths as I do.

So help me God.

20. Witnesses on an Indictment to Grand Jury.

THE Evidence which you shall give to the Grand Inquest, upon this Bill of Indictment against J. O. shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God.

To Witnesses on Crown-Side.

THE Evidence which you shall give to this Inquest against J. O. the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God.

To Witnesses at Nisi Prius.

THE Evidence which you shall give to this Inquest, concerning the Matter in Variance, shall be the Truth, and nothing but the Truth.

So help you God.

The next Justice of the Peace may give an Oath to every Officer present at the Trial of an Offender, by a Court-Martial, before any Proceeding thereon, where the Criminal may be punished by Death.

To an Officer at a Court-Martial.

§ W. & M. **Y**OU shall well and truly try and determine, according to your Evidence, the Matter now before you, between our Sovereign Lord the King, and the Prisoner to be tried.

So help you God.

See Parliament, and Postage of Letters.

Orchards. See Hedge-breakers.

Barking Fruit-Trees, forfeits treble Damages to the Party grieved, and 10 *l.* to the King; the Damages to be recovered in an Action of Trespas. 37 H. 8. cap. 6.

Orders. See Poor.

Ordinary.

IS not bound to attend the Sessions; and when he doth attend, he is not Judge *an legit ut Clericus vel non*; for if he say that the Person can read, when he cannot, the Court may hear him; and if he cannot read, the Offender shall be hanged and the Ordinary fined for his Misbehaviour.

A Felon may have the Clergy allowed at the Gallows, tho' he hath failed to read, and is adjudged to be hanged; which shews that the Presence of the Ordinary is not always necessary where Clergy is allowed.

The Court may likewise in Strictness of Law, allow Clergy, tho' the Ordinary or his Deputy do not attend.

Overseers of the Poor. See Poor.

Outlawry. See Addition.

THIS is when a Man is called into Law, and doth not appear upon three Writs issued against him, which being directed to the Sheriff with a *Non est inventus*, then there is a Writ called the *Exigent*, directed to the Sheriff to proclaim the

the Man (that is, to call him) in five County-Courts, which are held once a Month, charging him to appear; which if he did not, then he was *Exlex* (that is depriv'd of the Benefit of the Law) and out of the King's Protection.

The Punishment seems to be derived from the old *British* Priests called *Druids*, who sat as Judges here; and if any Person made Default in appearing before them, he was forbidden their Sacrifices, and then no man would either speak to him, or come near him, for Fear of being infected; and besides, he was to have no Benefit of the Law.

It was so great a Punishment, that in After-Ages no Man was outlawed but for Felony; and then the old Writers tell us, That the Person had *Caput Lupinum*, that is, he carried his own Judgment in his Face, for he might be killed as a Wolf; and this so continued till *Ed. 3.* and then it was made lawful for the Sheriff only to kill him, but not without a Warrant to do it.

But now Outlawries are become frequent in Personal Actions; the Effect of which is, *viz.* Forfeiture of Goods and Chattels to the King; and if for Felony, then 'tis Forfeiture of his Lands in Fee, or for Life, and his Goods, &c.

It was a Question whether a Man outlawed for Felony might be taken in Execution at the Suit of a Creditor, because he being attainted by the Outlawry, his Goods are forfeited to the King, and his Body at his Disposal; but it was held, That he is subject to such Execution, but the Sheriff may chuse whether he will execute it or not; and that if the Law should be otherwise, then the Party might take Advantage of his own Fault, for he might suffer himself to be outlawed, and then get a Pardon, and deceive all his Creditors. 1 Leon. 326.
Moor 179.
753.
Owen 69.

A Man was outlawed for Murder, who held Lands of the King, which he seized and gave to another; the Outlawry was reversed, and the Question was, Whether the Person might re-enter, or first petition to the King? And it was held, that he might re-enter upon his Grantee, because there was no Record of Attainder to put him on his Petition. 1 And. 188.

Error to reverse an Outlawry for Murder, the Error assigned, was, That *Tempore promulgationis Utlagarie, & diu antea & post* he was beyond Sea; it should be *tempore* of the Exigent awarded; for if he depart after that Time, and is then outlawed, he shall never reverse that Outlawry, because he fled from Justice, *destinato Consilio*; but the Attorney General confessing the Error, it was reversed. 1 Cro. 464.

Paper and Parchment.
Papists. See Recusants.

Paper and Pamphlets.

10 A. C. 19.

ALL Papers called *Pamphlets* shall for every *Half Sheet* pay a *Half-Penny*, if larger than half a Sheet, a Penny; and larger than a whole Sheet, and not six Sheets in *Octavo*, or in a lesser Page, or not exceeding twelve Sheets in *Quarto*, or twenty Sheets in *Folio* 2 s. Sterling for every Sheet of Paper in one printed Copy, and for every Advertisement in the *London Gazette*, or other printed Paper made weekly publick 1 s. Sterling.

Two or more Justices, &c. may hear and determine any Offence against this Act in printing, selling, or exposing to Sale, any Pamphlet or News-Paper within their Jurisdiction not stamped; they may summon the Offender and Witness upon Complaint made within three Months after the Offence, and may examine them on Oath, or upon Proof of Notice given, may proceed, tho' the Offender doth not appear, and give Judgment; and if convicted, either upon View of the Justices, or upon such Information, may issue Warrants to levy the Penalty of 10 l. on the Goods of the Offender by Distress and Sale, if not redeemed within six Days; and if such Distress cannot be had, may commit him till the Penalty is paid.

The Party grieved may appeal to the next Quarter-Sessions, who may examine Witnesses upon Oath, and finally determine, and may then issue Warrants to levy the Penalty.

The Justices may mitigate any Penalty, the reasonable Costs and Charges of the Officers and Informers being allowed over and above the said Mitigation, and so it doth not reduce it to less than a fourth Part over and above the Costs and Charges.

Any Person sued for putting the Act in Execution may plead the General Issue, and give the Act and any special Matter in Evidence; and if he recover shall have treble Costs.

Printing a Pamphlet above one Sheet, published within the weekly Bills of Mortality, and not carrying it within six Days to the head Office for Stamping; and if printed elsewhere, and not brought to the head Collector of the Stamp-Duties within fourteen Days, the Printer and Publisher shall lose the Profit of the Copy of such Pamphlet, of which the Duty is not paid, and shall forfeit 20 l. with full Costs; the like Penalty if the Printer's or Publisher's Name is not printed thereon:

One Moiety of these Penalties is to the Crown, the other to the Informer.

A Warrant to levy the Penalty of 10 l.

To the Constable, &c.

Surrey, ff. **W** Hereas * Complaint hath been made unto us, whose Names are subscribed, two of his Majesty's Justices of the Peace for the said County, that R. B. of, &c. did on the 27th of July last past at L. in the said County, expose to Sale one Sheet of Paper, commonly called a Pamphlet, not being stamped, as it ought to be by Law, and the Duty not being paid for the same; We thereupon did summon the said R. B. to appear before us at, &c. on Monday the 28th Day of July aforesaid, where he did appear accordingly, and was then and there convicted upon the Oath of W. R. of, &c. of and in the Penalties, by Reason whereof he hath forfeited 10 l. according to the Statute in that Case made and provided; which said Sum we did † mitigate to 5 l. These are therefore to require you forthwith to levy the said Sum of 5 l. by Distress of the Goods of the said R. B. and if the same are not redeemed within six Days after the said Distress taken, that then you sell the same, rendering the Overplus to the said R. B. if any such shall be, after reasonable Costs and Charges first deducted; and that you pay one Moiety of the said 5 l. to the King, and the other Moiety thereof to the said W. R. who first informed us of the said Offence, &c.

10 Anna, Fu- cap. 19. Two Justices.

* It must be within 3 Months after the Offence.

† Not less than a 4th Part.

Pardon.

Pardon is either, { (1.) Of Course,
or
(2.) Of Grace.

Pardon of Course is, where a Man is convicted of Manslaughter, or *Se defendendo*; which see in *Chance-Medley* in *Homicide*.

Pardon of Grace is either { (1.) General,
or
(2.) Particular.

General Pardons have now so many Qualifications and Exceptions, both as to Offences and Persons, that the Court cannot take Notice of them without being pleaded? and in the Plea the Defendant must aver, That he is none of the Persons excepted: A Form of which Plea you may see. 3 *Inst.* 234.

Moor 752.

By the Statute of 13 R. 2. cap. 1. 'tis enacted, That the Offence shall be specified in the Pardon, otherwise it shall not be allowed. Before the making that Statute, a Pardon of all Felonies was good for Murders; but since it hath been held, That a General Pardon for Murders or Robberies is not good, without reciting the Indictment and Verdict in the Pardon it self. *Sid.* 366, 430.

Raim. 13.

Mr. Howard, Brother to the Earl of Carlisle and his two Servants were convicted for the Murder of one *Proby*, and being brought to the Bar, they pleaded the King's Pardon, in which all the Proceedings on the Indictment were recited, and that the King pardoned the Killing and Felony, but the Word *Murdrum* was not in the Pardon, and there was no Writ of Allowance; whereupon Mr. Howard, was advised to get a better Pardon, otherwise this might be repealed by *Scire facias* 7 Years hence, and he might be executed; afterwards he had a better Pardon and a Writ of Allowance.

Dyer 50.

Anno 31 H. 8. It was made Treason for a Wife to poison her Hasband. The very next Year this Fact was committed by a Woman and she was pardoned; her Son brought an Appeal of Murder, and it was adjudged that it did not lie; because the Offence being made *Treason*, could not be punished as *Murder*, for the greater Crime drowns the less; but this seems to be a very odd Reason, that the Alteration of the Punishment should change the Nature of the Offence; for tho' it was newly made Treason yet it was *Murder* still.

Cro. Eliz.
314.

In Cases of *Treason*, the Court may allow a Pardon without a Writ of Allowance, but not so in Felony; and therefore where a particular Pardon is pleaded, it must be *sub Sigillo*, and it ought to have a Writ of Allowance; but a Clause of *Non obstante* dispenses with that Writ.

One Cole was convicted of Burglary and pardoned, *Ita quod bene se gesserit* towards all People: Afterwards he broke the Peace by beating another Man, and this being suggested to the Court, Execution was prayed against him; and the Clerk of the Crown informed the Court, That one *Whiddon* was hanged in the Queen's Reign for the same Cause after a Pardon; but I do not find any Rule made in the Principal Case.

2 Cro.

I shall mention the Case of Sir *Walter Raleigh*, because it was an extraordinary one. He was attainted of Treason, Anno 1 Jac. and was kept Prisoner in the Tower twelve Years; then the King gave him a Commission to go into *Guinea*, and Authority to execute Martial Law and Power over the Lives of other Men; he went thither, and upon his Return was committed again to the Tower, and brought to the Bar, and had Sentence and Execution upon the Attainder, though he insisted that his Commission giving him Power over the Lives of other Men, was a *Pardon by Implication*: but the Court answered, That

no Man must be pardoned but by exprefs Words, and not by Implication.

A Pardon doth not only take away *pœnam*, but *reatum*; so Witness that a Man is restored to his Credit, and enabled to be a Witness, though he hath been convicted of Felony; but it seems otherwise if the Conviction had been for Perjury, because it would be an Injury to the People in general to make them subject to the Testimony of such a Person. 1 Vent.

349.

A Conviction of Felony, and burnt in the Hand, this is in Nature of a Pardon; for by this Punishment he is cleared of the Offence, and is become a lawful Witness. Raym. 370.

On the twelfth of February a mortal Stroke was given, the Person died the eighteenth of June following; in the same Year there was a General Pardon, by which all Offences, Misdemeanors, and Felonies, before and until the fourteenth of February, were pardoned: It was adjudged, That the Stroke being before the Pardon, though the Death ensued afterwards, the Offender should be discharged, because the Stroke was the Offence, and that was pardoned; so that all the Consequences of that Offence were likewise discharged. Plowd. Com. 401.

4 Rep. 42.

Till an Inquisition is found, nothing vests in the King, and therefore a Pardon before an Inquisition found, discharges all Forfeitures. 2 Mod. 53.

But where once an Interest is vested, a Pardon will not operate upon the Goods forfeited, without some Words of Restitution. Sid. 168.

Pardon is no Bar to an Appeal, nor to an Execution, if the Offender be attainted and pardoned of Felony only.

Some Persons convicted of Capital Offences, have been thought fit to be reprieved from Execution, in order to obtain a Pardon, as fit to serve the King either in the Army or Navy, but have been continued in Prison, a long Time, in Expectation of passing such Pardon under the Great Seal, and some Time is taken up in the Pleading and Allowing it in the usual Form of Law: Therefore by a late Act, as soon as the Judge receives a Warrant under the Sign Manual of the King for a Pardon, he may direct his Warrant to the Sheriff or Gaoler, directing the immediate Delivery of such Prisoner out of Custody, to such Officer under whom he shall be listed; and the Pardon, when passed, shall be entred and enrolled. 2 & 3 An.

About the later End of the Reign of Car. 2. it was argued by Counsel in B. R. in the Case of one Parsons, who was pardoned for the Murder of Mr. Wade of Essex, That the King could not pardon one who was convicted of that Offence, and because it could not be proved that there was any human Law prohibiting such Pardon, therefore Recourse was had to the Scripture, where we find a positive Law given by God to Noah, about

about 1658 Years after the Creation of the World, and about 796 Years before the *Mosaical Law*, (*viz. He who sheddeth Man's Blood, by Man shall his Blood be shed.* Gen. 9. 6.

But this Text was never taken to be universally obligatory; for we find, that if a Master had killed his Servant, and he died immediately under his Hand, then the Master was to die; but if the Servant had survived 24 Hours, though he died afterwards, in such Case the Master was not to die. *Exod. 21. 13. Numb. 35. 30.*

So if there were not two Witnesses to prove the Murder, the Offender was not to die. *Deut. 19. 15.*

We likewise find that *Simeon* and *Levi*, the Sons of *Jacob*, were guilty of Murder, but not punished.

Then as to the *Mosaical Law*, 'tis true, the Text is, (*viz.*) *Thou shalt take no Satisfaction for the Life of a Murderer, who is guilty of Death, he shall surely be put to Death.*

This was only obligatory to the *Jews*, and not to the *Gentiles* before the Time of our Saviour, nor to Christians since; and if it only obliged the *Jews*, then the ceremonial and *Judaical Laws* being abrogated ever since the Death of Christ, or at farthest at the Destruction of *Jerusalem*, when the *Jewish Common-Wealth* and Government was destroyed, the Obligation of that Law has ceased ever since.

Besides, the *Mosaical Laws de pœnis*, were not natural, but positive and judicial, and admitted of Dispensations even amongst the *Jews* to whom they were only binding; for the Christians never punished Offenders in several Cases with those Penalties which were prescribed by *Moses* to the *Jews*, (*viz.*) The Stealer of an Ox was to restore five Oxen, and so in many other Cases.

'Tis true, he saith, That a *Murderer shall surely be put to Death*, and 'tis as true, that in another Place he saith, *That whosoever doth any Work on the Sabbath, he shall surely be put to Death*, and yet no Man will affirm, that the supreme Magistrate cannot pardon those who work on the Sabbath.

David, who was the best of King's, and who understood the *Jewish Laws* as well as any Man, pardoned *Abalom*, who had killed his Brother *Amnon*, and 'tis no where imputed to him as a Fault pardoning so unnatural a Murder.

'Tis therefore plain, that here is neither any divine or humane Law to prohibit Kings from pardoning Murder, and it may often happen, that (upon due Consideration of the Person, Times and other Circumstances) a Pardon may be as effectual to attain the good Ends intended by a Punishment as any rigorous Execution of it might have been, and in such Cases the King is the supreme Judge.

Parliament.

TWO Justices in *Wales* may tax every City and Borough in the twelve Counties, and in *Monmouthshire*, towards Wages of Burgesses, &c. 35 H. 8. cap. 11.

By the Act 9 *Anna*, cap. 5. the Oath appointed to be taken by Candidates, may be administered by the Sheriff, or Under-Sheriff, or other Officer, to whom it belongs to take the Poll, or make the Return, or by any two Justices of the Peace, who are to certify the same into the *Chancery* or *B. R.* within three Months afterwards, under the Penalty of 300 *l.* one Moiety to the King, and the other to the Informer, and no Fee shall be taken, but 1 *s.* for the Oath, 2 *s.* for the Certificate and 2 *s.* for the Filing, on the Penalty of 20 *l.*

Any Candidate, or any two Persons who have a Right to vote, may require another Candidate at the Time of Election, or before the Meeting of the Parliament, to take this Oath.

*I. R. B. do swear that I truly and bona fide have such an Estate in Law or Equity, to and for my own Use and Benefit, of or in Lands, Tenements or Hereditaments (over and above what will satisfy and clear all Incumbrances that may affect the same) of the annual Value of 600 *l.* above Reprizes, as doth qualify me to be elected and returned to serve as a Member of the County of Worcester, according to the Tenour and true Meaning of the Act of Parliament in that Behalf; and that my said Lands, Tenements or Hereditaments, are lying or being within the Parishes, Townships or Precincts of Old Swinford and Pedmore in the said County.*

These must be either Copyhold or Freehold Lands, and the Person must be entitled to them for Life, or a greater Estate, and every Citizen and Burgess is to have 300 *l.* per Annum, or his Election shall be void.

The Act doth not extend to the eldest Son of a Peer, or of a Person qualified to serve as a Knight of a Shire, to make him incapable, &c. nor to the Universities.

A Mortgagee shall not be capable unless he hath been in Possession seven Years before the Election.

No Person having a Pension from the Crown shall be ca-^{25 H. 8.}
pable of being elected a Member of Parliament. cap. 36.

See Act 10 *Anna*, cap. 23. The Freeholders Oath at Elections.

Assure.

Pasture.

HE who keepeth 120 Sheep on his several Pastures which is fit to depasture Milch-Cows, and which is not Common, shall, for every sixty Sheep, keep one Milch-Cow; and for every 160 Sheep, shall rear one Calf: Penalty is 20 s. per Month for not keeping a Cow, and 20 s. for not rearing a Calf; one Half to the King, the other to the Party who prosecutes within a Year after the Offence.

Justices in Sessions have Power to hear and determine the said Offences. 1 & 2 Phil. & Mar. cap. 3.

Made perpetual, per 13 Eliz. cap. 25. 7 Jac. cap. 8.

There was a Complaint made to the Parliament *Anno* 25 H. 8. That the rich Men in those Days hired many Farms, and converted them from Tillage to Pasture, which impoverished the ordinary People; and this was occasioned by the great Profit arising by Sheep, insomuch that some Men had 24000 Sheep of their own fed upon those Farms, and encreased the Price of a fat Sheep from 2 s. 4 d. to 6 s.

15 H. 8.
cap. 13.

This was the Reason of making a Law, That no Man should keep in his Possession, at one Time, above 2000 Sheep, to be accounted after the Rate of six Score to the Hundred; the Penalty is 3 s. 4 d. for every Sheep above that Number.

The Prosecution must be within a Year after the Offence, and it may be before Justices in Sessions, and the Penalty is to be divided between the King and Prosecutor.

But a Person might keep as many Sheep as he could upon Lands of his own Inheritance, or as Tenant in Dower, or by the Curtesy.

And because Questions might be made what should be accounted Sheep; therefore it was provided, That Lambs should not be so accounted till *Midsummer* Twelve-month after their Fall.

Likewise, if any Person had more than 2000 Sheep, either as Executor, or by express Devise, or by Marriage, they should not incur this Penalty, so as within one Year afterwards they put off as many as would reduce the Number to 2000 at the End of the Year.

Also an Infant who had above that Number devised to him, could not be punished during his Nonage, or any Person for him.

In that Act there is likewise a Clause, that no Man shall take above two Farms, except he dwell in the same Parish where his Farms are, under the Penalty of 3 s. 4 d. per Week between

between the King and Prosecutor; but this must be at the Assizes, and not at the Sessions.

Any Person may seize great Cattle and Sheep brought from *Scotland* into *England*, *Ireland* or *Wales*, until such Time as the Succession to the Crown of *Scotland* shall be declared and settled by Act of Parliament there, in the same Manner as it is settled in *England*; for till that Time, all such Cattle or Sheep brought from thence are forfeited to him who seizes, or will sue for the same, and likewise the Value of such Cattle, one third Part of which Value is for the King, and the other two Thirds to him who will sue for it.

The Cattle thus seized, may be detained four Days, and if the Owner doth within that Time make it appear upon Oath of two credible Witnesses before one Justice, that they were not brought from *Scotland* after *December 25, 1705.* then the Justice by his Warrant may cause them to be delivered.

And if any *English* Cattle or Sheep shall with the Privy of the Owner, or any other Person employed by him, be mixed with such *Scotch* Sheep or Cattle, and seized with them, in such Case they shall be taken to be *Scotch* Cattle, and disposed as aforesaid; and if any Persons wilfully agree and conspire to evade the Seisures, then upon an Indictment within a Year after the Offence and Conviction, the Forfeiture is 100 *l.* to be recovered, and distributed as above-mentioned.

Indictment for pulling Wool from live Sheep.

Suffex, ff. **J**UR' &c. quod J. O. nuper de H. in Com' Suffex p^o Pastoz 18 die Maii, &c. clausum R. B. apud H. p^o in Com' p^odict' fregit & intravit ac lanam viginti obium valoris viginti Solidorum de bonis & catallis p^o R. B. apud H. p^o in Com' p^o a corporibus obium p^o adunc & ibidem erissen' expilabat, & lanam p^odictam sic expilatam felonice cepit & asportabit contra Pacem dict' Dom' Reg' Coron' & Dignitat' suas, &c.

Partridge. Vide Fowl in Bail.

THE first Statute made to prevent Killing of Partridges, was *Anno 11 H. 7. cap. 17.* by which it is enacted, That no Person of what Condition soever shall take or cause to be taken any Partridges or Pheasants upon the Freehold of another without his Assent, or without the Leave of the Possessor thereof, upon Pain of forfeiting ten Pounds, one Moiety to the

the Prosecutor, the other to the Owner or Possessor of the Ground.

The Recovery is to be by Action of Debt, Bill or otherwise; and likewise the Justices of Peace have Power to hear and determine as well by Inquisition, as Information and Proofs.

I find a Precedent of an Action of Debt brought upon this Statute, which I think is not improper to transcribe, though it doth not relate to a Justice of Peace.

Raft. Ent.
529.

Suffex, ff. **J.** O. sum' fuit ad respondend' R. B. de plac' quod reddat ei decem Libras quas ei debet & injuste detinet, & unde idem R. B. per B. H. Attorn' suum dicit quod cum in Statuto in Parlamento Dom' Henrici nuper Reg' Angliæ septim' post Conquestum apud Westm' Anno Regni sui underimo tent' & edit' inter cetera continetur quod nulla persona cujuscunque gradus sive condition' fuerit capiat aliquos Phasianos vel Perdices in retibus aut al' ingeniis super solo & possessione alicujus alterius persone sine special' licent' ejusdem possessoris sub pena forisfacture decem Librarum, una medietas ad usum cujuscunque qui in hac parte sequi voluerit per Action' debet' altera medietas ad usum possessoris ejusdem soli in quo Phasian' vel Perdices ill' capt' fuerint prout in eodem Statuto plenius continetur p' tamen J. O. Statutum predict' minime ponderans 14 die Augusti, Anno Regni Dom' Reg', &c. quinque Phasianos super solo ipsius R. B. apud H. in Com' p'ced' retibus sine licent' ipsius R. B. rep' & asportab' per quod actio accrebit eidem R. B. ad erigend' & habend' de p'fat' J. O. p'ced' 10 l. predict' tamen J. O. licet sepius requisit' p'ced' 10 l. eadem R. B. nondum solvit, &c. ad dampnum quinque Librarum & inde p'duc' sextam, &c.

23 Eliz.
cap. 10.

The next Statute was Anno 23 Eliz. by which Killing or Taking of Partridges or Pheasants in the Night-time with Nets, &c. forfeits for every Partridge 10 s. and for every Pheasant 20 s. which if not paid in ten Days after Conviction, the Offender must be committed one Month without Bail; and besides such Forfeiture and Imprisonment, must enter into Recognizance before one Justice, &c. with two Sureties, to appear at the next Sessions, &c. and being there convicted, must give Bond with two Sureties to be taken by one Justice, not to offend in the like Nature for two Years.

Forfeiture to be divided between the Lord of the Manor and Prosecutor; but if the Lord will not take it, then between the Prosecutor and the Poor; one Moiety to be recovered by the Churchwardens, &c.

3 Bulst. 71. A Man was indicted on this Statute for taking Partridges cum Retis, it was quashed; for it should be cum Retibus.

The

The next Statute was *Anno 1 Jac.* by which *Shooting at Partridges or Pheasants*, or taking, killing or destroying them with *Setting-Dogs* or *Nets*, or other Instruments, or taking or breaking the *Eggs in the Nests*, shall be committed for three Months without Bail for every Offence, unless he pay immediately upon his Conviction to the Church-wardens of the Parish where the Offence was committed, or where the Offender was apprehended, for every Pheasant 20 s. to the Use of the Poor, &c. for every * Partridge 10 s. &c. but after he hath * But per been committed one Month, he may be discharged, if he will 7 Jac. c. 11. enter into a Recognizance with two Sureties in 20 l. each, That tis 20s for he shall not at any Time afterwards offend in the like Nature. every Partridge, being convicted

by one Witness upon Oath before two Justices, if taken between the First of July and last of August. The Prosecution must be within six Weeks after the Offence done.

Selling or buying to sell, Partridges or Pheasants, forfeits for every Partridge 10 s. Pheasant 20 s. one Moiety to the Prosecutor, the other to the Poor.

Justices in Sessions, or two Justices out of Sessions have Power to hear and determine these Offences, and to administer an Oath, &c.

By this Statute, the Conviction was to be by Confession of the Party, or Oath of two Witnesses before two Justices, and the Recognizance was also to be taken by two Justices.

But by a subsequent Statute, the Conviction may be by one Witness before two Justices, for taking, killing or destroying them with *Setting-Dogs and Nets*, or with any Manner of Engine, and the Recognizance may be taken by one or more Justices, &c. where the Offence was committed.

By this Statute, the Qualifications of Persons to take Partridges, &c. were altered.

A Lord of a Manor, a Freeholder of 40 l. per Annum, either in his own, or in his Wife's Right, a Leaseholder of 80 l. per Annum for Term of Life or Lives, or worth 400 l. in Goods, may kill Partridges in Day-time in their own Grounds.

Constable by Warrant from two Justices may enter Houses of suspicious Persons, and take or kill their Dogs, and cut or carry away their Nets, as forfeited to the Constable.

And by another Statute, if a Constable find any Partridge in such a House, he shall bring the Offender before a Justice; and if he cannot produce the Person of whom he bought it, or some credible Witness to make Oath of the Sale thereof, he shall be committed by the Justice for killing it, &c. and forfeits for every Partridge, &c. 5 s. and not exceeding 20 s. one Moiety to the Informer, the other to the Poor, &c. to be levied by Distress, &c. and if that cannot be taken, then he must be committed to the House of Correction for any Time not exceeding one Month, and not less than ten Days.

* Not having Inheritance of 100 l. per Ann. or for Life, nor Lease for Ninety-nine Years of 150 l. per Ann. other than the Son and Heir of an Esq; 22 & 23 Car. 2. 25.

Keeping Setting-Dogs, Nets or Tunnels, not * qualified, and being convicted before one Justice upon Oath of one Witness, is subject to the like Penalties.

No *Certiorari* to be allowed, unless the Offender before Allowance become bound to the Prosecutor in 30 l. with Sureties, to be approved by one or more Justices, before whom the Offender is convicted, to pay the Prosecutor full Costs upon Oath within one Month after Conviction is confirmed, or *Procedendo* granted.

An Indictment for taking of Partridges, &c. without Licence.

Suffex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Yeoman, 14 die Augusti, Anno Regni, &c. apud H. pzed' in quodam loco ibidem vocat' W. qui quidem locus tunc fuit & adhuc est liberum tenementum R. B. de H. pzed' Ar' & nunquam fuit Warrenia ipsius J. O. propria ser Phasianos & viginti Perdices cum quibusdam reticulis & aliis ingenuis valoris quinque Solidorum tunc & ibidem cepit, occidit & asportabit sine aliquo consensu, agreemento aut speciali licentia pzed' R. B. in hac parte prius habit' vel obtent' in dia' Dom' Reg' nunc contemptum & contra formam Statuti in hujusmodi casu edit' & prohib. &c. 3 Bulst. 178.

Peers.

WHAT I shall mention under this Title doth not concern the Office of a Justice of Peace, yet I think it is not improper to give a short Account of the Trial of a Peer by Peers.

It must be upon an Indictment at the Suit of the King; and though a *Premunire* is tried at his Suit; yet in such Case; and in Appeals, the Trial shall be by Freeholders.

He must be a Peer *Ratione Nobilitatis*, and not *Baronia qua tenet jure Ecclesia*, for Bishops have not this Privilege, nor the Sons of Noblemen, if such Sons are not Lords of Parliament.

The Indictment may be either before the Commissioners of Oyer and Terminer, in the County where the Offence was committed, or in B. R. if done in *Middlesex*.

After 'tis found, the King appoints a Lord High Steward of England by a Commission under the Great Seal, *pro hac vice*; but yet such Commission may be adjourned.

In this the Indictment is recited, and Power given to the Lord High Steward to proceed thereon, *secundum Legem & Consuetudinem Anglie*, and the Peers are commanded to attend him, and the Lieutenant of the Tower to bring up the Prisoner; this is the Substance of the Commission.

Then two Writs are issued out of Chancery, *viz.* a *Certiorari* to remove the Indictment, returnable *indilate*, and a Writ directed to the Lieutenant of the Tower to bring up the Prisoner.

The Lord High Steward likewise makes two Precepts under his Seal, the one directed to the Commissioners to certify the Indictment, the other to the Lieutenant of the Tower, setting forth the Time and Place when he shall bring up the Prisoner.

He also directs another Precept to the Serjeant at Arms to summon the Peers to appear.

The Court being sate, the Clerk of the Crown and the Usher deliver the Commission and the White Rod to the Lord High Steward, and both are by him delivered to them respectively; and the Usher holds the Rod all the Time of the Trial.

Then the Serjeant at Arms makes three Proclamations:

- (1.) To all Justices and Commissioners to certify Indictments and Records.
- (2.) That the Lieutenant of the Tower return his Writ and Precept, and that he bring the Prisoner to the Bar.
- (3.) That the Serjeant at Arms return his Precept, with the Names of the Peers by him summoned.

The Return of these Writs and Precepts are read by the Clerk of the Crown, and another Proclamation is made, That the Peers answer to their Names; but they are not to be sworn.

If the Prisoner pleads Not guilty, he cannot have Counsel, because the Issue being joined upon a Matter of Fact, the Proof ought to be so plain, that no Defence can be made against it; but he may have Counsel upon Matter of Law; as where a Pardon is pleaded, &c.

If the Peers, when withdrawn, doubt upon any Thing, it must be resolved in Court, in the Presence and Hearing of the Prisoner, and for that Purpose the Judges attend the Trial. Now the Reason why the Prisoner must be present, is because he ought to be satisfied that the Case is put right.

They ought to continue together till they are agreed of their Verdict, which is given in the Absence of the Prisoner.

This was an Opinion formerly; but since it was resolved in my Lord Morley's Case, that because they were not sworn, and by Reason of the great Trust reposed in them, they might go to their own Houses.

Perjury.

None are Noble under the Degree of a Baron; and where he or a Bishop is a Party to the Suit, a Knight must be returned of the Jury.

If a Woman who is Noble by Birth, marrieth a Gentleman, she doth not lose her Name of Dignity; but if she acquire her Nobility by Marriage, and being a Widow, marrieth a Gentleman; in such Case she retains her Dignity only by Curtesy.

Perjury.

IS an Offence, where a *lawful Oath* is administered to a Witness by any one who hath *Authority* so to do in any *judicial Proceeding*, and the Person sweareth falsely, either himself, or by the Subornation of another, in a Matter *material* to the Issue or Cause.

'Tis punishable either at *Common Law*, or by the * Statute. A false Oath in any *Court of Record*, or in any *judicial Proceeding*, tho' not in a *Court of Record*, is Perjury at *Common Law*, tho' 'tis not in any Thing *material* to the Issue. *Style* 374. 2 Cro. 8. * 5 Eliz. c. 9. *Roll. Abr.* 2 Part 257, 258. *Sid.* 274. Sid. 454. Raym. 34.

There was a Verdict for the King on an Information of Perjury, the Information was, *Memorandum*, That Sr. Tho. Fanshawe, Knight, giveth to the Court to understand and to be informed, that in *Hillary Term* 1659. in *Rotulis continetur sic*, that *Dun* brought an Action, and so recites the whole Record and Trial, and that the Defendant *falsum præsinit Sacramentum* at the said Trial, &c. it was objected in Arrest of Judgment, that to say in *Rotulis continetur*, that the Defendant took a false Oath, is not a positive Charge, so it ought to be thus (*viz.*) After the Recital of the Proceedings, &c. *Et ulterius dat Curia hic intelligi*, that the Defendant took a false Oath; but adjudged that the Record it self being a Record of the Court, the Judges will consider what is positive in it.

Information for Perjury setting forth, That upon giving a Lease and Release in Evidence, bearing Date 15 and 16 Days of July, 1681. executed at *Albemarle House*, to which Mr. Stroud was a Witness: The Defendant swore That Mr. Stroud about the Middle of July, 1681. was at *Newnham* * *Innuendo Newnham* in *Devonshire*, when in Truth he was not; there was a Verdict for the King, but the Judgment was set aside, because the Word *Newnham* is an *individuum Vagum*, and might be as well in one Place and County as in another; and 'tis not restrained by the *Innuendo* to *Devonshire*, because 'tis no Averment; it may serve to explain a Thing precedent, but never to add new Matter, or to charge the Sense of the precedent Words, and if so, then this is a constructive Perjury, which the Law will not

* There must be an Averment that what he swore was not true, otherwise the Word *falso* will not do.

not

not allow. 'Tis true, this is an Information upon the *Statute*, but yet it ought to be as certain as on an *Indictment*; the Difference is, That where the Conviction is on the *Statute*, Disability is Part of the Judgment; but if at Common Law, then Disability is the Consequence of the Conviction, therefore in the last Case a *Pardon* restores him to be a Witness, but not in the other, for there he must reverse the Judgment.

Perjury in the *Spiritual Court*, or in a *Court Baron*, is punishable at *Common Law*; but where the Indictment is upon the *Statute*, it must appear to be committed in a *Court of Record*; as if the Defendant is indicted for *procuring* a Witness to take a false Oath before the Town-Clerk of *London*; this is not within the *Statute*, for 'tis *coram non Judice*, and the Subornation must be to give Evidence in a *Court of Record*. 3 Leon. 170.

So where a Man was prosecuted in the *Star-Chamber* for a Ye.v. 4. Perjury in the *Court of Requests*, where the Freehold of the Land came in Question; it was resolved by all the Judges, That the Man was not punishable, because that Court had no Authority to examine Titles of Land, and therefore what he swore was no more than an idle Oath.

But if a Man swear in common Discourse, That he hath a Property in a Thing, when really he hath not; or if a Constable is sworn to execute his Office truly, and doth not; these and such like Oaths are called Extrajudicial, and are punishable neither at Common Law, nor by the Statute of Perjury.

If an Indictment is grounded upon the Common Law, there needs not so great a Certainty in it as if brought on the *Statute*. Sid. 106.

By which it is enacted, viz. That whosoever shall procure another to commit corrupt Perjury in any Court of Record, or in perpetuam rei memoriam, the Suborner shall forfeit 40 l. being convicted; and if not worth it, then he shall be committed six Months without Bail, and shall stand in the Pillory one Hour in some Market-Town adjoining, or where the Offence was committed, and be never more a Witness till Judgment is reversed. Eliz.

The Suborned, or he who by his own Act commits wilful Perjury, shall upon Conviction forfeit 20 l. and be committed six Months without Bail, and be disabled to be a Witness till Judgment is reversed; and if not worth 20 l. then to be set in the Pillory as aforesaid, and have both his Ears nailed.

One Moiety of the Forfeitures to the King, the other to the Party grieved; who will sue for the same.

Justices in Sessions have Power to hear and determine, &c. the Offences against this Statute.

My Lord Coke, in his Paraphrase upon this Statute, tells us, That the Indictment must set forth the judicial Proceeding; it must also shew, that the Oath was taken in something material to the Issue, because the Act gives the Remedy to the Party grieved; and if the Deposition is not in a Thing which is conducting

conducing to the Issue, the Party is not grieved. *Cro. Car.* 132.
3 *Inst.* 165.

Perjury may be committed in an *Answer in Chancery*, tho' not in a Matter charged in the Bill; but then the Indictment must be laid at *Common Law*, because 'tis in a Thing not material to the Issue; But if it had been in a Deposition 'tis not * Perjury, if not contrary in a Matter particularly charged in the Interrogatories, because the Commissioners, who administer the Oath, have not Power but only in Matters therein charged, *Sid.* 274.

The Reason why Perjury cannot be punished by the Statute for a false *Affidavit* taken before a Master in Chancery, or for a false *Answer*, is, because the Statute extends only to † *Witnesses* in Causes between the Parties; but such false *Affidavit* may be punished as aforesaid, by an Indictment at Common Law; and in such Case the *Affidavit* must be filed; and after the Perjury is assigned, you must conclude *prouit patet per Recordum*. *Style* Latch 38. 336.

But if it appears that the Oath was made in something conducing to the Issue, setting forth that the Master had Power to administer an Oath, the Indictment may be good upon the Statute.

The Defendant having made an *Affidavit* in C. B. and appearing in Court upon a Summons, confessed that he made it, and that it was false; whereupon the Court recorded his Confession, and ordered that he should be taken into Custody, and stand on the Pillory, &c.

It was objected that his Confession was not a Conviction, but only Evidence of his Guilt, and that he ought to be brought before the Court judicially by Indictment and convicted thereon; besides the Court of C. B. hath no Jurisdiction in this Case, it being Criminal; but *per Curiam*, the Confession of a Crime is the strongest Evidence against the Criminal himself, and the Statute 5 *Eliz.* gives Power to hear and determine this Offence by Inquisition, &c. or otherwise, by which Word the Confession of the Party may be intended, and the Punishment by Pillory is inflicted by this Statute, which shews that the Court proceeded on the Statute, but 'tis likewise an Offence at Common Law. *Trin.* 9 *Geo. B. R.*

If an Indictment is at Common Law, supposing the Perjury to be committed in a Deposition to Interrogatories in Chancery, you need not set forth to what Interrogatory; but if 'tis upon the Statute, then you must shew that the Commission was under the Great Seal of England, that it may appear to the Court the Commissioners had Authority to administer the Oath, and you must assign the Perjury to be in a Point conducing to the Issue in Chancery, and shew how it concerned the same.

That a Man is punishable on the Statute for a false Oath before a Steward of Commissioners had Authority to administer the Oath, and you must assign the Perjury to be in a Point conducing to the Issue in Chancery, and shew how it concerned the same.

Sap. 5.
Sid. 106. 2 *Roll. Rep.* 427. *Cro. Eliz.* 428. 3 *Leon.* 211. *Cro. Eliz.* 147. 201. *Hct.* 12.

So

So likewise, if it be upon *the Statute*, it must appear to be wilful Perjury; for if 'tis that the Defendant *false & deceptive deposed*, 'tis not good, though the Indictment concludes. *& sic commisit voluntarium Perjurium*, because the one is no positive Allegation that he did it wilfully, and the other is but a wrong Conclusion from the Premises.

Indictment for Perjury in a Deposition.

Suffex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Innholder, 17 die Augusti, Anno Regni, &c. apud H. pzed' in Com' pzed' coram R. S. & R. P. Arm' Commissionariis virtute Brevis dict' Dom' Reg' de Commissione extra Curiam Cancellarie sue apud Westminster in Com' Middl' pzeantea emanentis & pzed' R. S. & R. P. direct' pro examinatione testium tam ex parte J. L. de L. in Com' pzed' Gen' querentis quam ex parte C. H. de B. in Com' pzedict' Ar' defendantis in quadam causa sive materia inter ipsos J. L. & C. H. tunc in dicta Curia Cancellarie in variantia de penden' pro titulo unius Messuagii cum pertin' in H. pzed' Personaliter constitut' & tunc & ibidem existens * testis productus p pzed' J. L. ad testificandum & deponendum in causa pzed' ex parte ipsius J. L. & Juratus p dictos Commissionarios ad veritatem dicend' super interrogatoriis ei adtunc & ibidem p dictos Commissionarios ex parte pzed' J. L. ministratum † dixit & super Sacramentum suum voluntarie & corrupte deposuit & affirmavit in his Anglicanis verbis sequen' viz. To the sixth Interrogatory he saith, That the said Messuage was used, &c. Proout p pzed' depositionem pzed' J. O. inter alia pze fat' Commissionarius in dicta Cancellaria certificatam & missam ad ibidem de recordo remanen' plenius apparet ubi re vera & in facto pzed' Messuagium non occupatum fuit, &c. Et sic idem J. O. dicto 17 die Augusti, Anno supradicto apud H. pzed' in Com' pzed' coram pze fat' R. S. & R. P. Commissionariis dict' Dom' Reg' (ut pze fat'ur) existentibus voluntarie & corrupte Perjurium commisit voluntarium & corruptum contra formam Statut' in hujusmodi casu edit' & probis, &c.

* If a Man wage his Law, he is a Witness for himself, but not punishable by the Statute. Noy 128. If a Man swears the Truth, and doth not know it, he is guilty of Perjury. Her. 97.

† *Taeto per se sacro Evangelio deposuit* is ill, because no positive Allegation that he was sworn. Cro. Eliz. 104.

An Indictment upon the Statute of 22 Car. 2. cap. 5.
for Perjury in an Affidavit before Commissioners
Extraordinary.

Perjury in
an Affidavit
before
Commissioners,
by
Vertue of
this Act, is
punishable
as if taken
in open
Court.

Sussex, ff. **J**UR', &c. quod J. O. de H. in Com' pzed' Gen' 16
die Augusti, Anno Regni, &c. apud H. pzed' in
Com' pzed' venit coram T. S. Gen' adtunc Com-
missionar' virtute ejusdam actus Parliamenti, Anno Regni
Domini Caroli nuper Regis Anglie, &c. 29 fact' entitulat'
An Act for taking Affidavits in the Country, to be made Use
of in the Courts of King's Bench, Common Pleas and Exche-
quer, nuper edit' & probis. & adtunc & ibidem Juratus ex-
isten' super sacrosancta Dei Evangelia (eodem T. S. adtunc
haben' sufficien' authozitatem ad ministrand' Sacramentum
pzesat' J. O. virtute Dni Parliamenti pzed') adtunc & ibidem
super Sacramentum suum pzed' falso malitiose voluntarie &
corrupte deposuit jurabit & in scriptis affirmabit de & concers-
nente [Here recite the Special Matter, and afterwards the Af-
fidavit in hec verba] Inter R. W. queren' & P. E. defenden'
pout p Sacramentum pzed' ejusdem J. O. in scriptis reman-
nen' & in Curia dict' Dom' Reg' coram ipso Rege apud Westm'
in Com' Middlesex, affilat' plenius liquet & apparet ubi re-
vera & in facto (Here recite the Perjury) pzed' J. O. falso,
malitiose, voluntarie & corrupte deposuit jurabit & in scriptis
affirmabit & sic pzed' J. O. pzed' 17 die Augusti, Anno Regni, &c.
apud H. pzed' in Com' pzed' coram pzesat' T. S. Gen' ad-
tunc & adhuc Commissionar' virtute pzed' actus Parliamenti
existen' adtunc & ibidem haben' sufficien' authozitatem ad ad-
ministrand' pzed' Sacramentum pzesat' J. O. falso, malitiose, vo-
luntarie & corrupte commisit voluntarium & corruptum Per-
jurium contra formam Statut', &c.

An Indictment for Subornation of a Witness in an
Answer in Chancery.

Cro. Ent.
362. B.

Middl' ff. **J**UR', &c. quod F. L. nuper de L. in Com' pzed'
Gen' 17 die Augusti, Anno Regni, &c. apud West-
minst' in Com' pzed' illicite & corrupte p finistros
& illegitimos labores & medios procurabat & causabat quendam
R. O. de H. &c. testem ex parte F. L. adtunc & ibidem produc-
tum ad testificand' p eodem F. L. in Curia Cancellarie dict'
Dom' Reg' apud Westm' pzed' ad * quendam Willam in eadem

* If in re-
citing the

Action you should mistake the Term in which it was brought, this is only circum-
stantial; and if it appear to be between the same Parties, and in the same Cause, 'tis
good, for the Defendant cannot be doubly charged in such Case. Godb. 88.

penden'

penden' p & concernente quadam legatione quindecim librarum
ruidam F. L. filio pzed' F. L. p ultimam voluntat' S. S. patris
R. S. legat' & debitat' voluntarium & corruptum perjurium
committere in hoc quod idem R. O. super Sacram' suum
coram Dom' Reg' in Cancellaria sua pzed' apud Westminster,
falso prestavit Sacram' suum pzed' & corruptive dixit & quod
ipse idem R. O. (here recite the Oath) ubi rebera (here re-
cite the Perjury) ratione cujus false Depositionis & Juramen-
ti p pzed' R. O. modo & forma pzed' fact' & jurat' pzed' R. S. su-
stinuit damna viginti librarum & sic idem F. L. pzed' 17 die
Augusti, Anno supradicto apud Westminster pzed' in Com'
Middlesex, pzed' procurabit & causabit pzed' R. O. per depo-
sitionem suam pzed' committere & perpetrare corruptum Perju-
rium in dict' Dom' Reg' nunc contemptum & ad grave damp-
num ipsius R. S. contra formam Statut', &c.

Indictment against the Defendant, for that he *movebat, per* 3 Mod. 122
suadebat & subornavit A. T. to swear that several Men were at
such a Conventicle, who really were in another Place at that
Time; upon Not Guilty pleaded, the Defendant was found
guilty, but upon a Writ of Error brought, the Judgment was
reversed, because the Indictment did not set forth that any
Oath was made, for 'tis not enough for one to say, that the
Defendant suborned another to commit Perjury, but he ought
to shew what Perjury it is which cannot be done unless an Oath
was made.

If Issue be joined upon any of these Indictments, and the
Prosecutor will not try it, the Defendant may bring it on by
Proviso, tho' 'tis not in the Case of the King, because 'tis for
the Benefit of the Subject not to lie under such an Imputation.

And because the Fact shall be tried, the Courts above do not
grant *Certiorari's* to remove these Indictments, nor quash them
upon Motions before Trial.

Neither after Trial do they grant a *New one*, tho' there is Sid. 49.
apparent Cause; but this must be understood where the Defen- 1 Lev. 9:
dant is acquitted, for 'tis otherwise where he is found guilty.

R. was convicted of Perjury, upon the Evidence of D. and Sid. 217
afterwards R. convicted D. of Perjury in the very same Mar-
ter; but before he can be restored to his Credit, he must bring
a Writ of Error to reverse the Judgment upon the first Perjury.

I shall mention a Case or two more, and conclude this Title.

B. a Midwife was indicted for Perjury; the Case was thus, Sid. 377:
viz. one *Dormer* was Tenant for Life, with Remainder in Tail
to his Son, and for want of such Issue to his Daughter, &c.
he married, and lodged with his Wife in *Chancery Lane*, and in
a short Time he died; the Wife, soon after his Death declared,
That she was delivered of a Daughter; and upon a Trial in
Ejectment between the Infant and him in Remainder, it was
proved that she was delivered, by Circumstances usual in such

Perjury. Petition.

Cases; but the Midwife depofed, That this was the Child of a poor Woman in *St. Giles's in the Fields*, which ſhe bought of the Mother for Half a Crown, and that ſhe conveyed it in the Boſom of *Mrs. Dormer*, who cried out, and then the Midwife took the Child from her, and that there was a Bladder of Blood, and ſome other Things provided by her, to ſhew the After-birth: The Jury gave Credit to the Midwife, and acquitted her of the Perjury.

Moor 657. A Bill in *Chancery* was filed againſt B. who put in his Answer, and made Affidavit, that C. was ſo ill that he could not travel; when the Cauſe came to be heard, C. came into Court, and affirmed, That he was not ſick, but that it was a Contrivance of B. who deſired him to feign himſelf ſick in Bed, that he might depofe he left him ſo. The Lord Keeper *Egerton* order'd both Parties to attend, and to be examined on Interrogatories, and B. denied the Practice; but C. affirmed it, and produced ſome Witneſſes, who proved it very plainly. Now this being double Perjury, for making a falſe Affidavit, and afterwards denying the Practices on Interrogatories, he was fined 20 *l.* to the King, and committed. This I have mentioned, becauſe there have been ſome Doubts, whether the *Chancery* could puniſh Perjury.

2 Cro. 120. Price was indicted upon the Statute, for that he being produced as a Witneſs for the King upon a Trial in an Information, he did forſwear himſelf, and ſhewed wherein: And it was held, That a Witneſs for the King cannot be puniſhed by an Indictment; which is meerly at the Suit of the King, for he cannot puniſh his own Witneſs; but he may be proſecuted upon the Statute by an Information, becauſe one Moiety of the Penalty goes to the Informer.

* On the Statute.

Sir *John Jackſon* obtained a Verdict againſt one *Primate*, in Treſpaſs, who indicted the Witneſſes for Perjury; and this coming to a Trial, Sir *John* ordered his Servants to beat the Witneſſes who were to prove the Perjury; which was done, ſo as they could not appear that Day: And thereupon the Defendants were acquitted; and becauſe after an Acquittal in a criminal Caſe a new Trial cannot be granted, therefore the Court directed an Information againſt Sir *John Jackſon* for this Offence, and he was convicted upon it, and fined 1000 *l.* and bound to his Good Behaviour for a Year. 1 *Lev.* 124. *Sid.* 153.

Petition.

NO Perſon ſhall ſollicite or procure the Getting of the Hands of above twenty People to a Petition, Complaint, Remonſtrance or Declaration to the King, or to the Parliament, for any Alteration to be made, either in the Church or State,

State, unless the Matter is first consented unto by three or more Justices of the Peace, or by the major Part of the Grand Jury at the Assizes or Sessions, or in *London*, by the Lord Mayor, Aldermen, and Common Council; nor present it to the King with above ten in Number: The Penalty is any Sum not exceeding one hundred Pounds, and three Months Imprisonment without Bail.

It must be presented at the Assizes or Sessions, within six Months after the Offence, and proved by two or more credible Witnesses.

But Persons not exceeding ten, may present any Grievance to a Member of Parliament during the Sessions, or to the King, and both Houses of Parliament, or either may address to him, 13 *Car. 2. cap. 5.*

Pick-Pocket.

THIS is called, by my Lord *Hale*, Larceny from the Person, without putting him in Fear, for 'tis done *clam & secreta*, without his Knowledge; and in such Case, the Offender shall not have the Benefit of his Clergy; for 'tis taken away by 8 *Eliz. cap. 4.*

But 'tis not capital, unless the Thing taken be of the Value of 12 *d.* or more; for though the Statute took away the Privilege of Clergy, it did not alter the Offence, but it remains still Petit Larceny, if under that Value. Therefore,

1. It must be *clam & secreta*.
2. The Thief must have the actual Possession of the Thing taken.
3. It must be without putting in Fear.
4. And above the Value of 12 *d.*

Indictment for this Offence.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' predict' Labourer, 18 die Augusti, Anno Regni, &c. apud H. pzed' in Com' pzed' decem solidos in pecuniis numeratis de bonis & catallis cujusdam R. P. adtunc & ibidem a Persona ipsius R. P. clam & secreta & sine notitia pzed' R. P. felonice cepit furatus est & asportabit contra pacem dict' Dom' Reg', &c.

Pigeons.

Pigeons.

ANY Person killing or taking them, shall be committed by any two Justices for three Months, without Bail, unless he pay immediately to the Use of the Poor where the Offence was committed, or the Offender apprehended, 20 s. for every Pigeon so killed or destroyed.

If he doth not pay the Penalty, but is committed, then he may, after a Commitment for a Month, be discharged, if he will be bound before two Justices, with two Sureties in 20 l. a-piece, with a Condition never to offend again in the like Nature.

Conviction must be by his own Confession, or by Oath of two Witnesses, before two Justices.

See more for Pigeons, under Title Dogs.

'Tis not a common Nuisance to build a Pigeon-house, if the Person is a Freeholder, and therefore not punishable in a Leet; for it cannot be a common Nuisance, unless 'tis so to all People: Now this can be only a Nuisance to those whose Corn they eat, 2 Cro. 492. Poph. 141.

Pillory.

THIS is an infamous Punishment used here in the Saxons Times, and since that appointed by several Statutes.

51 H. 3. On Bakers.

31 Ed. 1. On Forefallers.

11 H. 7. cap. 4. For false Weights.

33 H. 8. cap. 1. Getting Money by Counterfeit Letters.

2 Ed. 6. cap. 15. Workmen conspiring about Wages, second Offence.

5 Ed. 6. cap. 6. Counterfeiting Seals of Cloth, or taking them off.

5 Eliz. cap. 9. Perjury.

3 Inst. 219. Justices of Peace should be well advised before they give Judgment herein, and the safest Way is to follow the Acts of Parliament.

Piracy.

Piracy.

IS an Offence of which the Common Law takes no Notice, because it cannot be tried by that Law, being done out of the Land.

'Tis Felony by the Civil Law, and was triable by it until the * Statute of H. 8. which alters not the † Offence, but the Method of Trial, viz. That it shall be tried according to the Course of the Common Law.

allowed, because 'tis not an Offence at Common Law, but by the Civil Law, which doth not allow Clergy in any Case. Moor 756. Yelv. 135. Noy 131.

'Tis for this Reason, That a Pardon of all Felonies will not pardon Piracy, because 'tis not Felony at Common Law, and therefore there can be no Corruption of Blood upon an Attainder for this Offence, tho' there is a Forfeiture of Life, Lands and Goods.

Neither can there be any Accessary at Land, because the Principal is not a Felon by our Law; but there may be an Accessary at Sea, and his Trial must be by the Civil Law, for no * Statute concerning Accessaries extends to this Offence.

But because it was a great Trouble and Charge to send People into *England* to be tried here for Piracies committed in the *Indies*; therefore by the Statute 11 W. 'tis enacted, That all Piracies, Felonies and Robberies, committed in any Port or Place where the Admiral hath Jurisdiction, may be tried either at Sea, or upon Land in any of the Islands, Plantations, Colonies, Dominions, Forts and Factories of the King, where it shall be appointed by Commission under the Great Seal of *England*, or the Seal of the Admiralty; which Commission is to be directed to the Admiral, Vice-Admirals, Rear-Admirals, Judges of Vice-Admiralty, or Commanders of any of the King's Ships of War, and to such other Persons as the King shall think fit.

These Commissioners may commit the Offender to Prison by Warrant under their Hands and Seals; but they must have Information of the Fact upon Oath, which they may administer.

Then they may assemble a Court of Admiralty, which must consist of seven Persons; and if so many cannot be had, then may three of the Commissioners, whereof the President of the *English* Factory, or the Governor, Lieutenant-Governor, or Member of his Majesty's Councils in any of the Plantations, or Commander of one of his Majesty's Ships, is to be one, who may assemble any Persons to make up seven in Number, so as they are Merchants, Factors or Planters, Captains, Lieutenants,

* 28 H. 8.

cap. 15.

† Therefore Clergy not

* 2 & 3 Ed.

6 G. cap. 24.

11 & 12 W.

6 G. cap. 19.

made perpetual.

nants, or Warrant-Officers in Ships of War, or Captains, Masters or Mates in Merchant-men.

This Court may issue out Warrants to bring in the Party accused, may summon Witnesses, and examine them on Oath, and may give Sentence and Judgment of Death, and may award Execution according to the Civil Law: And the Persons so convicted shall lose Lands, Goods and Chattels, as if attainted by Common Law.

When the Court is first assembled, the Commission shall be read, and the Court shall be called and proclaimed, and the President shall take this Oath:

ff. I R. P. do swear, &c. Then he shall administer the same Oath to the rest of the Court: Then the Prisoner shall appear, and the Register shall read the Articles upon which he is to be tried, in which Articles the particular Facts of Piracy, when and where, and in what Manner, &c. shall be expressed.

The Witnesses for and against the Prisoner shall be examined on Oath, and Judgment shall be given by Plurality of Votes; and the Prisoner shall be executed on the Sea, by Warrant directed to a Provost-Marshal, who shall be appointed for that Purpose by the President, and the major Part of the Court.

The Register must be a Publick Notary, or one appointed by the Court, who must take Minutes, and enter them in a Book, and shall transmit the same, with the Copies of Articles and Indictments, to the Admiralty in *England*.

If any of the King's Subjects commit an Act of Hostility on the Sea against other of his Subjects, by Vertue of any Commission from any foreign Prince or State; this is Piracy.

If any Master of a Ship, Seaman or Mariner, where the Admiral hath Jurisdiction, shall betray his Trust, turn Pirate, run away with his Ship, &c. Goods or Merchandize, or yield them up to any Pirate, or shall bring any seducing Messages from any Pirate, or corrupt or attempt any Commander or Mariner to yield up, or run away with the Ship or Goods, to lay violent Hands on his Commander, to hinder him from defending his Ship, &c. or shall confine the Master, or endeavour to make any Revolt in the Ship; such Person shall be taken to be a Pirate, &c.

He that sets forth a Pirate, or doth aid, assist, maintain, procure, command, counsel or advise any Person to commit Piracy, who doth it accordingly, is Accessary to the Piracy; and so is the Receiver or Concealer of a Pirate, knowing him to be so; and such Accessaries must be tried by the Common Law, as the Principals are, by the Statute 28 H. 8. which is declared to be in Force; and if convicted, shall be executed. See the Statutes at large.

5 Annz.

This Act is now continued by 5 *Anna*, for the Space of seven Years, and from thence to the End of the next Sessions of Parliament, and by an Act 6 *Georgii* made perpetual.

By the Statute 4 G. cap. 11. 'tis enacted, That all Persons who shall commit any Offence, for which they ought to be adjudged Pirates, Felons or Robbers, by the Act 11 & 12 W. 3. above-mentioned, they may be tried and adjudged for the same in such Manner and Form as by an Act 28 H. 8. is directed, and shall not have Benefit of Clergy.

Trading with a Pirate, or furnishing him on the Seas with 8 Georgii. Ammunition, or Provision, or Stores of any Kind, or corresponding with him, knowing him to be a Pirate, shall be a Felon, and tried according to the Statute of H. 8. and 11 & 12 Will. and being convicted, shall suffer Death without Benefit of Clergy.

Any Person belonging to a Ship or Vessel, who shall forcibly board or enter into any Ship or Vessel, though he doth not seize or carry her off, but shall throw over Board, or destroy any Part of the Goods, shall be deemed a Pirate, and punish'd as such.

Any Ship or Vessel fitted out with a Design to trade or correspond with Pirates, the said Ship and all Goods put on Board thereof, shall be *ipso facto* forfeited, one Moiety to the King, the other Moiety to the Informer, who may sue for it in the Court of Admiralty.

All Persons who by the Statute 11 & 12 Will. are declared to be *Accessaries* to any Pirates, shall from henceforth be *Principals*, and shall be tried as such by the Statute 11 & 12 Will. and being convicted, shall suffer as by the said Act without Benefit of Clergy.

Seamen wounded in Defence of the Ship or Vessel against any Pirate, shall not only have the Rewards appointed by the Statute 22 & 23 Car. 2. but shall be provided for in *Greenwich Hospital*, preferable to any Seaman who is disabled by Age.

A Commander, Master, Officer or Seaman in any Merchantman, carrying Guns and Arms, and not fighting and endeavouring to defend themselves and the Ship, being attacked by any Pirate, or by Words discouraging the Seamen to fight, so that the Ship is taken, shall forfeit all his Wages due from the Owners, and shall be committed for six Months.

No Master or Owner of any Merchant-Ship or Vessel shall pay any Wages to Seamen whilst beyond Sea, exceeding one Half, which shall be then due; nor until the Ship shall return to some of the King's Dominions, under the Penalty of forfeiting double the Money so paid, to be recovered in the Court of Admiralty by him who shall discover it and inform.

Captain or other Officer of a Man of War, receiving any Goods on Board in Order to trade, except Gold, Silver or Jewels, or except Goods of the shipwreckt Vessels, and except such Goods as the Lord High Admiral, or three Commissioners of the Admiralty shall be order'd to be taken on Board; and being convicted thereof by a Court Martial, shall loose his

Plague.

his Office and Command in the Ship, and be incapable to serve in any other; and shall forfeit to the King all Wages then due after such Offence committed.

The Captain, Commander, or other Officer, and all Owners of such Goods put on Board a Man of War, shall forfeit the full Value; one Moiety to him who shall discover and inform, the other Moiety to *Greenwich Hospital*, to be recovered in the Court of Admiralty.

Plague.

AN Infectious Person commanded to keep in, and afterwards going abroad, having a Sore not cured, 'tis Felony without Corruption of Blood, or Forfeiture of Goods; but if he hath no Sore, he is to be punished as a Vagrant, and bound to his Good Behaviour for a Year; and if such Person is wounded by a Watchman, attempting to come forth, the Watchman is not punishable.

Justices of Peace in a Corporation may set a weekly Tax on the Inhabitants of the Corporation, for Relief of Persons infected there; and if not able to pay it, then the Justices of the Corporation certifying it to the two next Justices of the County, they may tax all the Inhabitants within five Miles of the Corporation; those who are negligent in levying the Tax, forfeit 10 s. 1 *Fac. cap. 31.*

9 A. c. 2. By the Statute of 9 *Anna*, Ships coming from any Place infected with the Plague, shall perform their *Quarentine* as by Proclamation shall be directed, and that no Person shall come from, or return to such Ship during that Time: And if any Person arrive into any Port in *England* or *Ireland*, in any Ship coming from a Place infected, &c. and which is obliged to do *Quarentine*, shall quit such Ship whilst under *Quarentine*, he may at any Time after the Expiration of the *Quarentine*, be convicted thereof by the Oath of one Witness, before one Justice, &c. living near the Place where the Offence was done, and shall then forfeit any Sum not exceeding 20 l. as the Justice shall adjudge, to be forthwith paid unto such Justice, &c. who may reward the Informer, not exceeding one third Part, and shall pay the Remainder (deducting the Charges) to the Use of the Poor of the Parish where such Conviction shall be made; and in Default thereof, the Justice, &c. may send him to the House of Correction, there to be kept to hard Labour for any Time not exceeding a Month.

The Justices of the Counties adjoining to the Places where the *Quarentine* shall be appointed to be performed, may cause Watches to be kept Day and Night in the adjacent Parishes.

to prohibit any Person going on Board any Ship under *Quarentine*, except those who are to look after her, or have Licence. See *Quarentine*.

Pleas. See Felony.

Point. See Bone-Lace.

Pond. See Water in Title Fish.

Poison.

Killing a Man by Poison is so villanous a Murder, that it was Treason, and punishable by boiling to Death in hot Water before 22 H. 8. c. 89. but that Statute was repealed by 1 Ed. 6. c. 12. and 1 M. 1. and maliciously Poisoning, by which Death doth ensue within a Year and a Day, is declared to be wilful Murder of Malice prepensed.

A Man brought Drink to another, knowing it to be Poison, and perswaded him to drink it; who afterwards drank it, but not in his Presence; this was Murder in him who brought it.

The Husband gave a poisoned Apple to his Wife to eat, who not knowing it, gave it to her Child, with which it died; this was Murder in the Husband. 8 Rep. 44. 9 Rep. 81.

Indictment for that he did put *quoddam Venenum, Anglice Antimony*, into a Cup of Beer, and gave it to J. S. It was objected that *Venenum* was Latin for Poison generally, and not for any Species of it; but this was over-ruled. See *Hardr.* 361.

Poore.

IT was the Complaint of my Lord Chief Justice *Hale*, That the Laws of this Kingdom are defective in the Provision for the Poor, and that (contrary to all other Nations) the more populous we are, still we are the poorer.

But as the Law now stands, which is chiefly that of 43 *Eliz.* cap. 2. the Faults seem wholly to be in the Overseers of the Poor, who have only got a Custom of taxing the Parish, and neglect their Duty in the most material Things relating to their Poor.

This is the first Statute-Law made for the Relief of the Poor; for before the Reformation, there was no Occasion for any such Law, because such was the Devotion of our Ancestors, that there seemed to be a pious Contention amongst them, who should first bring their Offering to the Church.

M m

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The Bishop, to whom the Charge of Souls was committed, was (for that Reason) thought the fittest Person to be intrusted with those Oblations, which were used to be divided into four Parts, and thus distributed, *viz.* To the Priest, to the Poor, towards the Fabrick of the Church, and to himself, *Hospitalitatis exercenda Causa.*

By these and other superabundant Offerings at Altars, Sepulchres and Shrines of Martyrs, the Church became so rich that several Monasteries, Priories, religious Houses and Hospitals, were by this Means founded and plentifully endowed, where the Poor were sufficiently relieved, till those Houses were dissolved; and it was above 50 Years after the Dissolution that this Statute was made.

Overseers These Persons, who must be substantial Housholders, are usually nominated in the *Easter-Week*, or within a Month afterwards, and this by an Appointment under the Hands and Seals of two Justices dwelling in or near the Parish, or Division where the Parish lieth. The Form is thus:

Two Justices, *Quorum unus.*

Suffex, ss. **WE** whose Names are subscribed, being Justices of Peace for the County of S. do appoint T. P. and J. O. of H. in the said County, to be Overseers of the Poor of the said Parish, for and during the Space of one whole Year next ensuing the Date hereof, according to the Form of the Statute in that Case made and provided. Given under our Hands and Seals, &c.

When to meet.

By this Statute, they are to meet every Month in the Parish-Church, if not sick, or having some other just Excuse to be allowed by two Justices; and the Intent of their Meeting, is to consider of some proper Methods, not only to tax the People, and apply the Money for the Relief of the Poor, but to raise by such Taxation a convenient Stock of Flax, Hemp, Wool, Iron, and other necessary Stuff, to set them to work.

If they neglect thus to meet, they forfeit 20 s. for every Neglect to the Use of the Poor.

We have Laws now in Force, to confine Men to certain Places of Habitation, which is a Sort of Imprisonment, not for a Fault, but for a Misfortune in being poor; and it hath been questioned by some, whether such Laws were fit to be introduced amongst us, especially when so little Care is taken to employ our Poor.

It was this made a late Author propose an Expedient, which he thought would be more effectual to raise a Stock to set them to Work, *viz.* That every Person who deviseth one or more Legacies to the Value of 1000 l. shall bequeath 5 l. to the Poor of the Hundred or Division where he died; and in Case of Neglect, the Law should make such a Construction; and this was to be paid to the High Constable, and applied by the Justices

Justices at their next Monthly Meeting to raise a Stock to set the Poor to work where there is most Occasion.

But by a late Act, the Liberty of a poor Man is a little enlarged, for now he may remove into another Parish where he may have Work; but then he must have a Certificate under the Hands and Seals of the Churchwardens and Overseers, or the major Part of them; or under the Hands and Seals of the Overseers, where there are no Churchwardens, acknowledging the Person therein mentioned to be an Inhabitant legally settled in the Parish.

This Certificate must be attested by two Witnesses, and allowed and subscribed by two Justices, and delivered to the Officers of the Parish to which he removeth.

And this shall oblige the first Parish to relieve the poor Man and his Family when he stands in Need of Relief.

And by a subsequent Law, 'tis declared, That the Person who shall come into a Parish by such Certificate, shall not be adjudged to have a lawful Settlement by any Act whatsoever, unless he shall take a Lease of 10 l. *per Annum*, or execute some annual Office in such Parish.

Where a Man lives in a Parish, and hath Lands of his own there, or in Right of his Wife, he is not removable, but if he hath such Lands in one Parish, and lives in another, those Lands will not make a Settlement of him in the Parish where they lie, because he lives in another Parish.

In *Trinity Term 2 Anna*, a Question did arise between two Parishes in *Northampton*, upon an Order removed into *B. R.* by *Certiorari*, which is thus:

A Person who was not legally settled in the Parish who gave the Certificate, but who had lived there some Time, went into another Parish by Virtue of the Certificate, by which the Parish who gave it, owned him to be settled as an Inhabitant with them; afterwards, being poor, the Parish from which he came took him again; but upon Enquiry, found that he was never lawfully settled with them, but had gained a Settlement in another Place before they gave this Certificate, and thither they removed him: The Parish to which he was removed, appeals, because those who had given the Certificate had owned him to be an Inhabitant settled with them; but the Certificate was held by the Court to be only an Evidence of a Settlement; and so the first Order was confirmed.

But in another Case it was held that a Certificate is conclusive to all Parishes, for 'tis a solemn Acknowledgment that the Person is legally settled with them, and that there is no Reason to make it differ from an *Adjudication*, since 'tis an Acknowledgment of the Parishioners signed by proper Officers, and confirmed by two Justices, who are proper Judges, and there would have been an *Adjudication* of a Settlement upon less Evidence.

W. R. came from the Parish of *W.* with a Certificate, he being legally settled there, and went to the Parish of *K.* and because he was *likely to be chargeable*, they sent him back again to *W.* by an Order, but it was quashed, because by the Statute 8 & 9 *W. cap.* 30. he is not removable who comes with a *Certificate*, unless he is *actually chargeable*, and by this Order it is only said that he is *likely to be chargeable*, and the Sessions have no Jurisdiction by Way of Appeal upon such an Order.

2 Salk. 436. So when the Order was thus, *viz.* Whereas Complaint hath been made unto us, &c. That *W. R.* who lately came into the Parish of *B.* with a *Certificate* according to the Statute 8 & 9 *Will.* is *actually chargeable* to the said Parish, &c. this was quashed, because the Justices must make an *Adjudication* that he is chargeable, for unless they adjudge him chargeable, he is not to be removed.

Who are
to be re-
lieved, who
not.
9 Geo. c. 7.

No Justice of Peace shall order Relief to any poor Person dwelling in a Parish till Oath be made before such Justice of some Matter, which he shall adjudge to be a reasonable Cause for having such Relief; and that the same Person had by himself or by some other applied to the Vestry for Relief, or at some publick Meeting of the Parishioners or to two Overseers, and was by them refused to be relieved, and till such Justice hath summoned two of the Overseers to shew Cause why such should not be given, and the Persons so summoned have been heard or made Default to appear before the Justice.

The Person whom the Justice shall order to be relieved, shall be entered in the Parish-Books, as one of those who is to receive Collection as long as the Cause of such Relief continues, and no longer: And no Parish-Officer (except on an emergent Occasion) shall bring to the Account of any Parish any Monies he shall give to a poor Person who is not registred in his Parish-Book, as a Person entituled to receive Collection, on Forfeiture of 5 *l.* to be levied by Distress and Sale by Warrant of two Justices to the Use of the Poor.

The Persons to be maintained by a Parish-Charge, are of two Sorts, viz.

- Poor, {
1. By Impotency, as aged Persons; by Defect, as Infants, being naturally disabled, as Ideots or Persons visited by Sickness.
 2. By Casualty, as Persons maimed; House-keepers decayed by Fire, Robbery; or being bound for others, and paying their Debts.

Who are
to be tax-
ed, and
how; and

And every Inhabitant and Occupier of Houses, Lands, Tithes, Mines or Under-woods, is to be taxed towards this
concerning Churchwardens Accounts.

Charge;

Charge, according to the visible Estate which he hath or possesseth in the Parish where taxed, and not elsewhere.

This Tax is either upon Lands or Goods; but one and the same Person is seldom taxed for both.

The Farmer or Occupier, and not the Landlord, is liable to this Tax; for it arises by Reason of the Land in the Parish, and the Landlord is never assessed for his Rent.

The most reasonable Way of Land, is according to a Pound-Rate, and not according to the Quantity of the Land.

Where a Man hath Land, and a great Stock of Wares; as a Clothier, &c. he may be taxed for both, but not for such Stock or Goods with which he doth use to manure his Lands.

When Goods are rated, it ought to be after the Value of Lands, viz. Goods of the Value of 100*l.* should be rated 5*l.* per Ann. as Lands are; and the Person must be charged only in that Place where the Goods are at the Time of the Assessment; for if he hath no Goods where assessed, and is distrained, he may have an Action of Trespass, &c.

If the Parish is not able to maintain its own Poor, two Justices may tax any Parish within the Hundred, and the Sessions, may tax any Parish within the County.

If a Parish extendeth into two Counties, or Liberties, the Justices in such Case shall intermeddle with that Part which lies within their respective Jurisdictions, but the Overseers shall act in the whole Parish and not divide themselves.

If there is a Vill in a Parish which formerly had a Church or Chapel, and parochial Rites, and Officers chosen by the Inhabitants, and a separate Taxation made, &c. this is a Parish within the Act. *Hutt. 93. Cro. Car. 92.*

But making Rates since the Statute, and Proof of a Chapel being in a Village before, will not make it a Parish with all other Parochial Rites.

They must have Sacraments and Sacramen-

tals at the Time of the Making the Statute.

An Original Order was made at the Quarter-Sessions, setting forth that the Parish of D. was burthened with Poor, and that East Church had no Poor, therefore they ordered that D. should be annexed to East-Church, and that the Occupiers of Lands there should contribute 20*l.* per Ann. by equal monthly Payments to D. as long as it was overburthened with Poor, and East-Church had none: Adjudged that by the Statute 43 *El.* the Sessions may tax particular Persons in Aid for the Relief of the Poor in another Parish, or they may (as in this Case) assize the whole Parish in a certain Sum, and leave it to the Parish-Officers to proportion and collect, and that this Order was good for that Part, but naught as to the Uniting the Parishes.

1 Salk. 480.

2 Salk. 483.
524.

A Rate made by the Church-wardens, &c. for the Relief of the Poor, was confirmed by two Justices, but the Whole was rated upon the *real Estates*, and nothing on *personal Estates*, and therefore upon an Appeal the Rate was quash'd, and the Church-wardens were order'd to make a new Rate both upon *real and personal Estates*, which they did, but with great Inequality, for the *real Estates* were rated ten Times more in Proportion than the *personal Estates*; and thereupon this Rate was set aside upon an Appeal: It was objected that the Sessions had not Power to vacate whole Rates, but only to relieve particular Persons whom they find to be aggrieved; but adjudged that they may vacate whole Rates, and refer it to the Church-wardens to make new Rates, or they may make Rates themselves.

2 Salk. 532.

P. took Part of a House in the Parish of B. on the third Day of *December*, and was rated and distrained for a Quarter's Rate due *Christmas* following, which Distress was taken on a General Warrant made for the whole Year: Adjudged that he could not be rated for a *whole Quarter*, because by the Statute the Pools Rates are to be assessed monthly, for otherwise a Man cannot remove in the Middle of a Quarter, but he will be twice rated; neither can a Distress be taken by a general Warrant made at the Time of the Rate, but there ought to be a special Warrant; neither can it be taken for a *Quarter* before it is ended, if the Custom is to rate *quarterly*.

2 Salk. 527.

Adjudged that *Hospital Lands* are ratable to the Poor, because no Man by appropriating his Lands to an *Hospital* can exempt them from such Rates to which they were subject before, and by that Means lay a greater Burthen on the Parish.

2 Salk. 526.

Adjudged that all Rates ought to be equal as near as may be, therefore a *standing Rate* cannot be good, because Lands may be improved every Year, and therefore a Rate may be alter'd as Circumstances alter.

Order made by two Justices, &c. to Overseers to continue the weekly Payment of 2 s. to W. R. and all the Arrears till they find him *an House*, quash'd, because the Overseers have no Power to find him an House; that must be done by the Lord of the Manor, or by the Justices.

The Churchwardens of *Bishopsgate* made a Tax for the Relief of their Poor for a whole Year, which amounted to 600 l. and upwards, when they should have made only a quarterly Tax, and this was confirmed by the Alderman of the Ward thro' Inadvertency, who fearing the Churchwardens might collect the whole Sum, and make some ill Use of it, refused to grant his Warrant to distrain for this Tax, whereupon they moved for a *Mandamus*, and obtained a Rule for the Alderman to shew Cause why it should not be granted, who upon another Day shew'd the Matter before mentioned for Cause,

Cause, and thereupon a Rule was made, that he should grant his Warrant to distrain quarterly. *Mich. 1721. The Churchwardens of Bishopsgate versus Alderman Beecher.*

The Title of an Assessment for the Poor.

H. in the County **A**N Assessment made on the Inhabitants of the of *Sussex*, fl. *Parish* aforesaid, for and towards the necessary Relief of the Poor thereof for this present Year, commencing, &c.

J. O. }
W. U. } Churchwardens.
E. H. }
R. N. } Overseers.

A Confirmation of the Rates by the Inhabitants.

WE whose Names are subscribed to this Assessment, being Inhabitants of the Parish aforesaid, have seen and perus'd the same; and the several Sums above-mentioned are, by our Approbation, rated upon the respective Persons, according to the best of our Judgment.

Witness our Hands.

T. P. R. B. D. O.

Confirmed by two Justices.

Ratified and allowed by us, two of his Majesty's Justices of the Peace for the County aforesaid.

W. N. T. B.

The Rate being thus confirmed, if any Person shall refuse to pay, &c. it may be levied by Warrant from two Justices by Distress, &c. and if that cannot be taken, then two Justices may commit without Bail till Payment, &c. The Form is:

A Warrant to distrain for the Poor's Tax.

To the Churchwardens and Overseers of the Poor of the Parish of H.

WHereas Complaint hath been made unto us, That J. O. and T. P. both of your Parish, Husbandmen, being duly and severally assessed; this is to say, J. O. in 3 s. and T. P. in 3 s. for and rummaged,
M m 4 to.

towards the necessary Relief of the Poor of the said Parish, have and do refuse to pay the same as by Law they ought. These are therefore to command you, That forthwith you, or one of you, do levy the said respective Sums of Money upon the said J. O. and T. P. by Distress and Sale of their respective Goods, and in Default of such Distress, that then you certify the same to us. Given under our Hands and Seals, &c.

A Mittimus where a Distress cannot be had.

To the Keeper, &c.

Suffex, ff. **W**Hereas J. O. and T. P. both of, &c. were lawfully and duly assessed at the respective Sums of, &c. for and towards the necessary Relief of the Poor of the said Parish, and that they refused to pay the said Sums, and thereupon a Warrant was directed to the Churchwardens and Overseers of the Poor of the Parish aforesaid, under the Hands and Seals of, &c. two of his Majesty's Justices of the Peace for the said County, to levy the same by Distress and Sale of the Goods of the said Offenders: And whereas it appeareth unto us, That the said J. O. and T. P. have no Goods and Chattels upon which a Distress may or can be made, and that the said J. O. and T. P. do still refuse to pay the respective Sums upon them assessed: We therefore herewithal do send you the Bodies of the said J. O. and T. P. commanding you to receive them into Custody, and that they remain in Gaol without Bail or Mainprize, until they pay the said Sums respectively. Given under our Hands and Seals, &c.

But if any one thinks himself grieved by a Tax, he may appeal to the Sessions, whose Determination is final.

Sometimes the Sessions refer the Matter back again to the two Justices, to examine the Equality of the Taxes, and then those Justices may confirm it, if they see Cause.

30 Annae
cap. 20.

Many People being poor by Losses and other Misfortunes, and not able to make present Satisfaction to their Creditors; a Law was made, That if a poor Man was in Prison on the 7th of December 1711, and so continue, he may petition a Justice, &c. who by Warrant may require the Gaoler to bring the Prisoner to the Quarter-Sessions, to be held next after 40 Days from the Date of the Warrant, together with a Copy of the Cause of his Commitment, and there (viz. in the Sessions) the Prisoner shall subscribe and deliver a Schedule of his whole Estate, and the Names of his Creditors, and the several Sums of Money due to them, and then make * Oath, &c.

* Which see
in Tit.
Oaths.

The Schedule thus described in open Sessions must remain with the Clerk of the Peace for the better Information of the Creditors.

The

The Justice of Peace who grants the said Warrant, must give Notice in Writing, under his Hand and Seal, to all the Creditors that the Prisoner hath petitioned, &c. to be discharged, which Notice must be left with the Creditor, his Executors, Attorney or Agent, or at the Dwelling-house of him, at whose Suit he is imprisoned; and Notice thereof shall be given in the *Gazette* 30 Days before the Quarter-Sessions, and if proved on Oath at Sessions, that both such Notices were given, and that the Prisoner was actually so on the 7th of *December*, and continued so to the Time of the Sessions, and if that Oath of the Prisoner is not disproved on Oath, then the Sessions may by Warrant to the Gaoler discharge the Prisoner without Fee.

Prisoners thus discharged shall not afterwards be imprisoned by reason of any Debt contracted before the seventh of *December*, but if arrested, the Judge of that Court, out of which the Process issued, may release him, shewing the Judge a Duplicate of his Discharge, and giving a Warrant of Attorney to appear and plead to the Action.

Gaoler refusing or delaying to bring the Prisoner to Sessions, or detaining him after discharged, forfeits 10*l.* to the Prisoner, with treble Costs, to be recovered in the Courts of *Westminster*.

Any Person guilty of Perjury in these Matters, and being convicted, shall, over and above the Penalties now in Force against Perjury, be sent to the House of Correction for twelve Months without Bail, and there kept to hard Labour.

If any Action is brought against the Justice or Gaoler, he may plead the general Issue, and give the Act in Evidence, and if he recover, shall have treble Costs.

This Discharge shall not acquit the Person from the Debt, and no Person shall have the Benefit of the Act, who owes more than 50*l.* Principal and Interest to any one Person.

See the Act at large. See 6 *Geo. cap. 22.*

Confirmation of a Rate upon a Reference from Sessions to two Justices.

WE, whose Names are here subscribed, two of his Majesty's Justices of the Peace for the County aforesaid, and both of the Quorum, being appointed at a several Quarter-Sessions of the Peace held at L. for the East Part of this County on the ninth Day of July, &c. to hear and examine the Differences between the Overseers of the Poor, and the Inhabitants of the Parish of H. alledging, That they are over-rated to the Relief of their Poor; having examined the several Matters and Allegations relating to the same, we do find that the Rate, of which Complaint is made, is the same as hath been usually made there for several Years last past, and therefore we do confirm the same. Given under our Hands and Seals, &c. These

Account of These Overseers must within four Days after the End of their Year, and after other Overseers are nominated, give up their Accounts before two Justices in these Particulars :

1. What Money they have received, or what is assessed, and not received.
2. What Stock either they or the Poor have in their Hands.
3. What Apprentices they have put out.
4. What Poor they have relieved.

If they refuse to account, two Justices may commit them to Gaol, there to remain without Bail till they account, and pay the Money in their Hands to succeeding Overseers.

If they make a false Account, they may be bound over to Sessions, and there indicted.

If they refuse to deliver over what remains in their Hands, two Justices, by Warrant directed to succeeding Officers, may appoint them to levy it by Distress, &c. and if that cannot be taken, then they may commit them, *ut prius*.

2 Salk 485. Three Justices took the Account of the Overseers of ——— for the Year 1697, and adjudged by them that there was 69 l. 8 s. 10 d. due to the Parish, and they made an Order for the Payment thereof to the succeeding Overseers for the Year 1698: It was objected that the Justices had not Power to make such an Order, but only to grant Warrants to Distrain on the last Overseers, but adjudged that it was a good Order, and it was confirmed.

2 Salk 533. An Overseer accounted before two Justices, and his Account was allowed; the Parish appealed to the Sessions, and there his Account was disallowed, and he was ordered to pay so much to the new Overseers, which they adjudged to be in his Hands; which he not doing they committed him, but this Order was quashed, and the Person was discharged from the Commitment, because the Sessions should have ordered the Money to be levied by Distress in the same Manner as the Justices should do, and upon Return of their Warrant, that no Distress was to be had, then to commit.

2 Salk 531. An Overseer laid out his own Money to relieve the Poor, and before the End of the Year the Justices turned him out, and thereupon he got a *Mandamus* to the Successors to make a Rate to reimburse him, but it was set aside, because B. R. cannot order Overseers to make a Rate to reimburse another, but only to raise Money for the Relief of the Poor; there should be a Rate made every Month, which if the Justices will not allow, then a *Mandamus* is proper.

2 Salk 525. *Mandamus* to the Justices, &c. on the Statute 43 Eliz. to compel the old Overseers to account with the Successors, quashed, because by the Statute the Account is to be given to the

the two Justices, and not to the succeeding Overseers ; besides two of the Persons named in the Writ, and who are to account, do not appear to be Overseers.

The Overseers of the Poor of P. made a Rate for the Poor, Sid. 377. and taxed the Inhabitants of certain Hamlets in P. and de- 5 Mod. 273. fired the Justices of Peace in Soake (in which Liberty all the 421. Hamlets were) to sign the Rate, which they refusing, because they apprehended (Soake being exempted from the County) two Justices of the County would not be sufficient, and these Justices of the Liberty of Soake would not sign it, unless the Overseers would leave out the Hamlets ; a Rule was made to shew Cause why they refused to sign it, and no good Cause being shewn, a peremptory Rule was made, and if they refused, then an Attachment.

Mandamus to the Justices of Peace, and to the Overseers of the Poor of S. to give an Account of Money by them received for the Relief of the Poor, the Return was, that they had given an Account of the Money, and that they had disposed of several Sums in such a particular Manner setting it forth: Adjudged that this *Mandamus* was ill, because it was not suggested that the ordinary Remedies could not be had.

Mandamus to the Justices to appoint Overseers of the Poor in the Town of Rufford, they return that Rufford is an extraparochial Place, and therefore they are not to provide for their Poor.

It was objected against this Return, that admitting it to be extraparochial, yet the Justices are obliged by the Statute 43 Eliz. cap. 2. to appoint Overseers of the Poor, even in such Places, because in the enacting Part the Words are general, and extend to the Places, (*viz.*) *The Churchwardens of every Parish, and two or more Householders there to be nominated, &c. by the Justices, shall be called Overseers, &c.*

And the Court was of Opinion that Places Extraparochial are within the Words of the Statute ; for by the general Words the Justices have Power to name Overseers in all Parishes which must extend to Extraparochial Places as well as to Parishes in general ; for where there is the same Inconvenience, it should be subject to the Controle of the Justices, and most of the Forests in England are extraparochial, but they ought to maintain their own Poor.

The Defendants were indicted at the Sessions, for that they 5 Mod. 179. being chosen Overseers, &c. and having taken upon them the Office, they *& uterque eorum* did collect and receive several Sums for the Relief of the Poor, and did refuse to account within 4 Days after the End of the Years, &c. it was objected that this Indictment would not lie, because this was an Offence created by Act of Parliament, and the Punishment being directed by the Statute (*viz.*) that the Offender shall be committed by two Justices, there to remain without Bail, that Remedy must

must be pursued; 'tis true that is a proper Remedy to come at the Right, but the not *Accounting* was a Contempt of the Law for which an Indictment will lie.

Mod. Cases
37.

An Order was made by two Justices that *W. R.* should take upon him the Office of Overseer of the Poor; it was objected that it was ill, because it did not appear that *W. R.* was an *House-keeper* or an *Inhabitant* of that Parish, and the Court will not intend him to be one, and no Man can be Overseer for Part of a Parish.

A Warrant to make the Overseers account.

To the Constable, &c.

Sussex, ff. **T**Hese are in his Majesty's Name to command you, that you forthwith give Notice to the Churchwardens and Overseers of the Poor of the Parish of H. in the County aforesaid, for the Year last past, personally to appear before us at, &c. on, &c. to give us a true and perfect Account in Writing of Things by them done relating to their said respective Offices; and you are hereby required to signify unto them, that they do then and there certify unto us the Name of such other Inhabitants within your said Parish, as are thought fit to be Overseers of the Poor for the Year ensuing.

This last Clause may be left out where other Overseers are appointed.

A Warrant to levy the Arrears in the Hands of former Overseers.

To the Churchwardens and overseers of the Poor of the Parish of H. &c.

Surrey, ff. **W**Hereas it appeareth unto us upon your Complaint, That J. O. and T. P. Churchwardens, &c. and R. N. and W. V. Overseers of the Poor of the said Parish for the Year last past, were in Arrear to the said Parish in the Sum of 5 l. for Monies by them collected, received, and not disbursed in the Execution of their Office, and have not yet payed the same to you: These are therefore to command you, that you or some of you do levy the said 5 l. by Distress of the Goods of, &c. rendring to them respectively the Overplus; and in Default of such Distress, that then you forthwith certify us of the same. Given under our Hands and Seals, &c.

A War

A Warrant to levy 4 l. on an Overseer for neglecting to meet monthly.

To the Churchwardens and Overseers of the Poor, &c.

Suffex, ff. **W** Hereas it bath been duly proved before us, That Two Justices J. O. one of the Overseers of the Parish of H. in the said County for the Year last past, did for the Space of four Months ^{unus.} within the said Year, absent himself from monthly Meetings without any just Excuse, contrary to the Duty of his said Office, and to the Statute in that Case made and provided: These are therefore in his Majesty's Name to command you to levy four Pounds by Distress and Sale of the Goods of the said J. O. so much being forfeited by him by reason of his Absence as aforesaid, and that you imploy and dispose the said Sum to the Use of the Poor of the said Parish, and such other Uses as by the said Statute is appointed. Given under our Hands and Seals, &c.

A Warrant to Overseers to pay what is in Arrear to a poor Person, and to continue to relieve.

To the Churchwardens and Overseers of the Poor, &c.

Surrey, ff. **W** Hereas Complaint has been made unto me, by E. N. of your Parish, Widow, that the former Overseers of the Poor of the said Parish did pay unto the said E. N. the Sum of 1 s. 8 d. per Week, for and towards the Relief of her self and Children, and that you do refuse to pay the said weekly Allowance unto her, so that she is utterly disabled to make any Provision for her self and her Children: These are therefore to require you, upon Sight hereof, to pay unto the said E. N. all such Arrears as are become due since you have forborn to pay the same, and that you continue unto her the former Allowance of 1 s. 8 d. per Week, or forthwith shew Cause why you do refuse so to do. Given under my Hand, &c.

A Warrant commanding the Overseers to relieve a poor Person.

To the Churchwardens and Overseers of the Poor, &c.

Suffex, ff. **W** Hereas Complaint hath been made unto me, That R. W. of your Parish, Labourer, is very poor and impotent, and utterly disabled to provide for himself and Children, so that they are likely to perish for want of Relief: These are therefore

fore, &c. that forthwith you do relieve the said R. W. and his Children, and that you make such an Allowance weekly, as may be convenient, for and towards the Support of himself and Children, or forthwith shew Cause why you refuse so to do.

Parents
bound to
relieve
Children.
2 Bullst. 355.
And of
Children
settled with
their Pa-
rents.

Grandfather and Grandmother, Father and Mother, if of Ability, are bound to relieve their Children as the Sessions shall think fit, under Penalty of 20 s. per Month. 39 Eliz. cap. 3.

The Husband of the Grandmother is a Parent within the Meaning of the Act, especially if she was of Ability, at the Time of Marriage, or if she had an Estate afterwards; and he shall be charged during her Life; otherwise if she had no Estate.

The same Law for a Father-in-Law. Style 283.

An Order to pay 2 s. by the Week towards the Relief of his Father, till the Court should order the contrary, this is good, because if the Order had been indefinite, or for a certain Time, an Estate might have fallen to him within that Time.

2 Salk. 470.

Adjudged that till the Child is 8 Years old, its Settlement must follow that of the Parent, but that afterwards the Child may acquire a Settlement elsewhere, and if removed from the Place where the Parents were settled, it must appear in the Order, that it hath gained a Settlement elsewhere.

2 Salk. 427.

Order to send an *Idiot* to the Place where his Father was last legally settled, this is good and not like a *Bastard* who is to be maintained by the Parish where born, because he is *nullius filius*, so that the *Idiot* hath a Father, but the *Bastard* none, in Law.

2 Salk.

Mod. Cases
87.

A Child was born in the Parish of C. and whilst it was under 7 Years old, the Father removed to M. and gained a Settlement there: Adjudged that the Child had a Settlement there, so if the Father is settled in a Parish and dies, and afterwards the Mother dies in Childbed, the Child must be settled there.

The Husband was born in the Parish of St. Giles in Reading, where his Wife had likewise a Settlement before she married, but the Husband was bound Apprentice in the Parish of Eversly, where he served two Years; then his Master broke, and the Apprentice came back to Reading and married there, and had several Children and died; and afterwards his Widow and Children were by Order of two Justices removed to Eversly, which Order was quashed on an Appeal, and an Order made to send them to the Parish of St. Giles, because the Mother had a Settlement there before she married; and now both the said Orders being removed into B. R. by *Certiorari*, the original Order of the two Justices was confirmed, (*viz.*) That the Widow and the Children should be settled where the Husband and their Father was settled, and that his Death made no Alteration in the Case; and tho' the Wife had another Settlement before

before she married, yet that was lost by her Marriage. *Trin.*

9 *Geo.*

One *Rice* was settled six Years in the Parish of *St. N.* and Notice clandestinely came into the Parish of *St. H. in Abingdon*, and there lived without giving any Notice to the Parish Officers, he was afterwards removed by an Order to the Parish of *St. N.* which Order was confirmed upon an Appeal, and this Sessions, Order being removed by *Certiorari*, the Question was, Whether he having lived in this last Parish several Years, *Notice might not be presumed*, and every Thing else to gain a Settlement; and adjudged that it should not, because it appears by the Order, that he clandestinely removed himself thither, and might continue there clandestinely. *2 Salk. 472.*

R. F. was born in — and served 7 Years *Apprentice* there ending in 1693, and afterwards he went to the Parish of *S.* and rented a Chamber and a Shop of the *Blacksmith's Widow*, at 52 s. per Annum, with the Consent of the Bailiff of the Lord of the Manor, and was employed by the Parishioners to shoe their Horses, but gave no Notice in Writing, nor rented a Tenement of 10 l. per Annum, nor served any publick yearly Office; the Question was, Whether this publick Manner of living did amount to a giving Notice in Writing, within the Meaning of the Statute, 1 *Jac.* 2. and 3 & 4 *Will. &c.* and adjudged that it did not, for tho' it might satisfy the first Statute, it did not the last, because nothing shall amount to a Notice in Writing, but what is therein particularly mentioned. *2 Salk 476.*

The *Banes of Matrimony* were published between a poor Man and a Woman in the Parish of *H.* in the Church there, and for that Reason he was by an Order of two Justices sent thither, but it was quashed, because this is not such Notice as is required by the Statute, 3 & 4 *Will.* which being an *Explanatory Act*, shall not be construed according to Equity. *5 Mod. 454.*

But there are some Exceptions out of this last Act, (*viz.*)

1. If a Man on his own Account execute any publick yearly Office, or charge for a Year.
2. If he pay any Share, or Taxes, or Levies of the Parish, but not Taxes to the King, for that is due and must be paid by reason of Residence.
3. If an unmarried Person, not having Child, shall be hired for a Year, such Service, (*i. e.*) not the 40 Days, but his Continuing in the Service for a Year, shall be a Settlement. *3 & 9 Will.*
4. Being bound an *Apprentice*, and inhabiting in a Town.

(1.) As to the first of these Exceptions, this Case happened; a poor Man was appointed to be a *Parish Clerk*, and he executed that Office for a Year: Adjudged this made a Settlement, and *Executing any publick Office.* *2 Salk. 5.*

and 'tis not material whether he came in by the Appointment of the Parson, or by the Election of the Parishioners; for he is in for Life, and this is Executing an annual Office and Charge within the Meaning of the Statute. 3 & 4 Will.

Of paying Taxes or Levies of the Parish. (2.) One Facy was settled at H. and afterwards went into the Parish of M. where he rented an House at 7*l.* per Annum, and there he lived a Year, and paid the Rates and Taxes due for that House, which were not charged on his Person, but on the House: Adjudged that this Payment of the Parish Taxes made a Settlement.

Easter 1721. B. R. Upon an Order of Removal of a poor Man confirmed on an Appeal, and removed by *Certiorari*, the Case was (*viz.*) he lived last at B. at a Place called *Roscoe's Tenement*, and paid Taxes by the Name of the Occupier of that Tenement, whereas he ought to be personally charged, and not as an Occupier of the Tenement; but it was held, that paying Taxes as Occupier of a Tenement, and naming him Farmer thereof, is a sufficient Designation of the Person.

9 Geo. cap. 7. No Person after 25th March 1723, who shall be taxed to the Scavenger or Repairs of the Highways, and shall duly pay the same, shall be deemed to have any legal Settlement by reason of such Payment.

Nor shall any Person have a Settlement by Purchase of an Estate of Inheritance in a Parish where the Consideration Money was not above 30*l.* for any longer Time than the Purchaser shall inhabit on such Estate, and shall then be liable to be removed to such Parish where he was last legally settled before the Purchase made.

T. P. a poor Man came into the Parish and Town of B. where he rented an House at 3*l.* per Annum, but agreed with his Landlord not to pay any Taxes, the Apartment which he rented was distinct from the House, but taxed as a House, and assessed on the Landlord; and whilst he lived there, he was made Free of the Corporation, and voted at the next Election of Bailiffs as a Freeman: Adjudged that since the Explanatory Act 3 & 4 Will. nothing makes a Settlement that is not within the Words of the Exceptions; 'tis true, Coming into a Parish, and being Taxed, makes a good Settlement without Notice to satisfy the Act, 2 Jac. 2. but the subsequent Explanatory Act implies a Negative to any Thing else, and Voting relates to the Corporate Body and not to the Parish.

2 Salk. 534. Adjudged that where a Man is taxed to the Parish Rates, and stays in the Parish 40 Days after such Taxation, and without giving Notice, this is no Settlement within the Statute 3 & 4 Will. unless he pays, for Taxing alone is not equivalent to Notice, but Taxing and Paying is.

One *Ferrison* was Servant to Sir P. F. at W. who put him out to a Barber at C. to learn to Shave, for which the Barber was to have $\frac{1}{2}$ l. of Sir P. the Master, the Servant continued at C. for a Year, according to *Covenants* made between Sir P. and the Barber, and to which *Ferrison* the Servant was no Party: Adjudged that this did not make a Settlement at C. because there was no Service there by *hiring*, but he was there rather as a Boarder for his Education.

A Servant was hired for a Year in S. and served half a Year, and then was married to a Woman in W. Adjudged that this Hiring was not determined by the Marriage at the Complaint of the Churchwardens or Overseers, tho' it might upon the Complaint of the Master; for if he will suffer a Servant to continue a Year in his Service (thus Married), that will make a Settlement; 'tis true, the Statute is, that where any unmarried Person is hired for a Year, such Service shall make a Settlement, now the Words *such Service* shall relate to a Service where the Hiring is for a Year, and not to a Service where the Party is unmarried all the Year, because the Contract continues, and the Marriage is no Hindrance of the Service of a Man, for if he marries a Woman in the same Parish, that shall gain a Settlement.

Adjudged that the Statute, 8 & 9 Will. cap. 3. by which 'tis enacted, that an unmarried Person hired for a Year, shall not be settled unless he serves that Year, shall have no Retrospect, but shall extend only to such Cases which may happen of this Nature after that Statute.

A Servant was hired to live at R. for Half an Year, and after that was ended he was hired again by the same Master for another half Year, and in the same Parish, and so continued in the same Service for a whole Year, but upon two Contracts: Adjudged no Settlement, for it ought to be a Service for a whole Year upon one Agreement, because the Statute requires that the Contract should be entire as well as the Service, for by the Statute 5 Eliz. the Retainer was to be for a Year, and the Statute 14 Car. 2. requires 40 Days Continuance in a Parish, and the later Statutes do but turn the 40 Days into a Year's Service, and the Hiring to be a Retainer for a Year, it being supposed that no Master would hire a Servant for such a Term, unless he was of able Body, and not likely to be chargeable within that Time; but if a Service under several Contracts should gain a Settlement, then a Man may hire for a Month; and one who serves by the Week, or by the Day, if he continue in Service for a Year, will gain a Settlement, and thus the Statutes will be eluded.

A Servant was hired for a Year in Christ-Church in Oxford, and afterwards lived with her Mistress three Months of that Year in the Parish of Fowley in Berks, where her Mistress was a Visitor, and she served the remaining Part of the Year in

Of Hiring
and Ser-
vice.
2 Salk. 478.

2 Salk. 527.

2 Salk. 535.

Where a
Servant is
hired in
one Parish
and serves
in another,
his Settle-
ment shall
be in the
Parish
where he
served.
Pasc. 1722.
3 & 4 W.
8 & 9 W.

Christ-Church where she was hired, that being an Extrapochial Place, and becoming poor she went into the Parish of *St. Peter* in *Oxford*; from whence she was removed by an Order to *Fawley*, which Order was quashed upon an Appeal, the Sessions being of Opinion that her Settlement was in *Christ-Church*, where her Service determined; against which it was objected, that she could have no Settlement there because it was an *extrapochial* Place, it being neither a Town or Parish, and by consequence could have no Parish Officers, and therefore not within any of the Statutes relating to the Settlement of the Poor, for those Statutes require that the *Hiring* should be in some Town or Parish where there are proper Officers to take care that it should not be fraudulent to charge the Parish; and she could have no Settlement in *Fawley*, because her Mistress was there as a Visitor.

As to both these Points the Court declared, That where a Servant continues 40 Days in the Service of a Visitor, as well as of a Lodger, he gained a Settlement, for he could not be removed unless the Parish shew some Cause (*viz.*) that she was brought thither on purpose to have a Settlement; and as to the Objection, that the Statute requires the Hiring should be in a Town or Parish, and that this Servant was hired in neither, but in an extrapochial Place, she may properly be said to be hired in every Parish where she serves. *Pasch. B. R. 1722.*

Being bound
Apprentice.

2 Salk. 533.

An Appren-

tice to a

Master in

one Parish

was by a

verbal A-

greement

turned over

to a Ma-

ster in an-

other Pa-

rish, he

gains a

Settlement

there.

Trin. 9 Geo.

Mod. Cases

190.

W. R. was bound Apprentice for four Years to *R. R.* and served out his Time in the Parish of *B.* but his said Master *R. R.* was only a Lodger, and no Settlement in the Parish of *B.* because his Settlement doth not depend on his Master, but he hath gained a Settlement for himself within the Statute 14 *Car. 2.* by dwelling in the Parish of *B.* forty Days, the Case is the same of an hired Servant, tho' his Master had no Settlement in the Parish.

A poor Boy being bound Apprentice in *L.* his Master assigned him to *W. R.* who lived in *N.* another Parish: Adjudged that he gained a Settlement where his second Master lived, for tho' an Apprentice is not assignable, yet the Assignment is not void, but shall amount to a Contract between the Masters, that the Apprentice shall serve the last Master, and 'tis good by Way of Covenant, tho' not to pass an Interest.

The Son was bound Apprentice to his Father, who was a poor Man, and afterwards he gave up the Indenture of Apprenticeship, and the Son hired himself into another Parish for a Year, and served out the whole Year, but the Indentures were not cancelled, and thereupon an Order was made to send him to the Parish where he was an Apprentice, for he still continued so, because the Indentures were not cancelled.

Of Appeals. An Appeal lies to the next Sessions of the Peace from which the Party was removed.

And

And by the Statute 8 & 9 W. giving Notice to a proper Officer to Appeal, and not prosecuting the same, or if he prosecute it, the Sessions may order Costs from whom the Appeal is determined, or to whom Notice was given, to be paid by the Overseers of the Poor, or other Person against whom it was determined, or by the Person who gave the Notice.

And if he live out of the Jurisdiction of the Court in which the Appeal is determined, one Justice where the Person liveth, upon Request to him made, and upon producing a true Copy of the Order, moved by one or more Witnesses on Oath, shall by Warrant cause the Money mentioned in the Order, to be levied by Distress, or committed for 20 Days.

An Appeal from a Removal of a poor Person from one Parish to another, shall not be proceeded on unless reasonable Notice be given by the Parish Officers who make the Appeal to the Parish Officers from whence such poor Person shall be removed, the Reasonableness of which Notice shall be determined by the Justices in the Quarter-Sessions, to which the Appeal is made; and if it shall appear that reasonable Notice was not given, then they shall adjourn the Appeal to the next Quarter Sessions, and there finally determine it.

If upon an Appeal concerning any Settlement the Sessions shall determine in favour of the Appellant, that the poor Person was unduly removed, then they shall award the Appellant so much Money as shall appear to have been reasonably paid by the Parish on whose Behalf such Appeal was made, for the Relief of such poor Person, between the Time of such undue Removal and the Determination of the Appeal.

Order to remove a poor Woman from T. in *Worcestershire*, to S. in *Warwickshire*, afterwards two Justices in *Warwickshire* made an Order to remove her to a third Parish, (viz) to N. in *Worcestershire*, and the two Justices of that County sent her back again by an Order, to S. in *Warwickshire*, and upon an Appeal to the Sessions, the Settlement was confirmed at N. the third Parish, and then an Order was made by two Justices to execute the Sessions Order, all which Orders being removed by *Certiorari*, the Court quashed all but the first, because that is binding till repealed, which must be by an Appeal to the Sessions; now the first Order to send her from T. to S. was never repealed, for when she came to S. they sent her to N. a third Parish, by another Order, which shall never be taken to be an Original Order, but since N. had appealed to the Sessions, and had there been concluded, the Court would not quash the Sessions Order.

Order to remove a poor Man from B. to C. which was done, and then C. got an Order to remove him from thence to F. a third Parish, and these Orders being returned by *Certiorari*, it was adjudged that C. should have got the Original Order repealed, for otherwise the Sending him by an Order to F. was a

Falsifying the Original Order, which cannot be done but by Appeal, for the Order of two Justices is a Determination of the Right till 'tis repealed, therefore the Parish of C. should have appealed and got the Original Order discharged, and then the poor Man must be returned to B. from whence he was at first removed, and that Parish must send him to F. the third Parish.

2 Salk. 492. Order by two Justices to remove a poor Man to S. which
485. Order was confirmed upon an Appeal, then S. sends him by another Order to the Parish of Swanscomb, but this last Order being removed by Certiorari, was quashed, because the first Order being confirmed upon an Appeal, is conclusive and binding against all other Parishes, and none can say that S. was not the last Place of his lawful Settlement; 'tis true if the first Order had been discharged upon the Appeal, or if there had been no Appeal, then the Matter is at large as to all Parishes, but only as to the contending Parishes, (i. e.) other than to the Parish to which the poor Man was sent, for he shall never be sent thither again, because by the Reversal of the Order, the Sessions did determine that was not the last Place of his Settlement, so that an Order reversed upon an Appeal, is final only as to the contending Parishes; but an Order confirmed upon an Appeal, is conclusive to all Parishes.

4 Salk. 482. Adjudged, that if the first Order is ill, no subsequent Order upon an Appeal can make it good, and for that Reason in this Case, both Orders were quashed.

Of providing Work-houses for the Poor.

9 Geo. c. 7.

The Parish Officers with the Consent of the major Part of the Parishioners in Vestry, or other publick Meeting assembled, may purchase or hire any Houses in the same Parish, and contract with Persons for the lodging, maintaining and employing all such Poor as shall desire to receive Relief; and there keep and employ them, and receive the Benefit of their Work and Labour for their better Maintenance and Relief: And if any poor Person shall refuse to be lodged or maintained in such House, he shall be put out of the Books where the Names of Persons who ought to receive Collection are to be registred, and shall have no Relief from the Parish Officers.

Where a Parish shall be too small to purchase or hire such an House for the Poor of their own Parish only, Two or more such Parishes, with the like Consent as above, and with the Approbation of a Justice of Peace dwelling in or near such Parish, may unite under his Hand and Seal in purchasing or hiring such House; and if any Poor of the Parishes uniting shall refuse to be lodged there, &c. he shall be put out of the Collection-Book.

The Parish Officers with the like Consent may contract with any other Parish Officers for lodging, maintaining and employing any poor Persons of another Parish, and if they refuse shall be put out of the Collection-Book.

Order

Order to remove a poor Man from the Parish of St. George to the Parish of St. Olave, where he was last legally settled, which Order was confirmed upon an Appeal, and both Orders being removed by *Certiorari* were quashed, because the Original Order was directed to the Churchwardens of the Parish of St. Olave, that being the Parish to which he was removed, and the Justices cannot command them to remove him to themselves.

All Appeals must be determined at the Sessions in that County or Place wherein the Parish doth lie, *from whence the Poor Man is removed*, and not elsewhere.

If upon an Appeal, the first Order of Settlement is quashed, and the Person ordered to be sent to the Parish from whence he was removed, this is ill, because the Sessions have Power only to *quash* or confirm the Original Order; but because an Order may be good in Part, and void in Part, therefore this Order was quashed for that Part, by which the poor Person was to be removed, and was confirmed as to the other Part.

An Order of Removal was *confirmed upon an Appeal*, and the next Sessions after, there was an Order of a *Review* made, and the Sessions Order was quashed, because obtained by Surprise; but adjudged, that the *Order of Review* shall be quashed, because after the first Sessions, when the Original Order was made, the Sessions have no farther Authority. 2 Salk. 477.

Order of Removal was quashed at the Sessions, but because it did not appear that it came before them by *Appeal*, the Sessions Order was quashed, for they have not Jurisdiction but upon an Appeal.

The next Sessions, after an Order made, and an Appeal brought, adjourned the Appeal to the next Sessions following, and then they made an Order; and upon a Motion to quash it, for that the Appeal ought to be determined the very next Sessions, and not at an adjourned Sessions, it was adjudged that the Appeal must be lodged at the next Sessions, but may be determined at an adjourned Sessions. 2 Salk. 605.

The Order was, Whereas Complaint hath been made unto us T. P. and R. B. &c. by the Churchwardens, &c. that W. R. came lately to settle in the Parish of W. contrary to Law, we therefore do order you to remove him from the said Parish of W. to, &c. quash'd for Want of an *Adjudication*, and it is not said that he is *likely to become chargeable*, &c. Orders quash'd for Want of Adjudication. 163. 2 Salk. 473

The Order was thus, *viz.* Whereas the Parish of B. is (as we are credibly informed) the Place of the last legal Settlement of, &c. quashed, for 'tis no Judgment that it was the last Place of his Settlement, and the Statute requires that the poor Person shall be sent to the Place where he was last legally settled. 2 Salk. 478.

The Order was, Whereas Complaint hath been made unto us, &c. that E. F. is lately come into the Parish of St. G. and is likely to be chargeable to the same; and whereas on Oath

made by the said *E. F.* it appears that her Husband was last legally in the Parish of *H.* These are therefore, &c. Quash'd, because there was no Adjudication of the last Place of Settlement, but only that *H.* appeared to be so upon the Oath of the Woman.

- 2 Salk. 479. The Order was, Whereas Complaint hath been made unto us, &c. that *E. D.* with his Wife and Children came from the Place of his Abode and last legal Settlement in *B.* to the Parish of *A.* Quash'd, because there was no Adjudication that *B.* was the last Place of his lawful Settlement.

Orders
quash'd for
Misnaming
the Justices.
2 Salk. 473.
481. An Order was quash'd, because it did not appear that one of the Justices was of the *Quorum*; for this being a special Authority given to the Justices to remove a poor Person, it must be pursued.

- 2 Salk. 474. An Order to remove a poor Person was quash'd, because it did not appear that the two Justices were of that County, but only residing in the County.

- 5 Mod. 327. An Order was made by two Justices to remove a poor Man from the Parish of *W.* to the Parish of *C.* which Order was confirmed upon an Appeal, but being removed into *B. R.* both Orders were quash'd, because it did not appear that the original Order was made by two Justices of Peace; it was only, Whereas Complaint hath been made unto us, not reciting their Authority as Justices.

Orders
quash'd for
Incertaincy
and other
Faults.
2 Salk. 485. Order made to remove two Men and their Families from *W.* to *R.* Quash'd, because too general; for some of their Families might not be removable by Law; as for Instance, A Man settled in *B.* marries a poor Woman settled in *W.* who had Children by a former Husband, the Wife must be settled with her second Husband, but the Children of the first Husband above seven Years old are not removable; 'Tis true, those under that Age must go with their Mother, but still 'tis but as Nurse-Children, for they must be kept at the Charge of the Parish where their Mother was settled before her second Marriage.

- 2 Salk. 485. A poor Infant was left in Christ-Church Hospital, and upon Complaint of the Wardens of the Hospital two Justices made an Order that the Overseers of the Poor of that Parish should receive and maintain it; Quash'd, because it is not set forth that the Parents were not known, or that the Child was likely to be chargeable to the Parish.

- 2 Salk. 488. Order to remove a poor Man with his Wife and Children from *W.* to *S.* Quash'd, because Wife and Children was too general and uncertain, for some of the Children might not be removable, besides this Order was, *J.* Whereas it appears upon Examination before us or one of us, which is ill, because the Examination ought to be before two Justices.

- 2 Salk. 492. Order to remove a poor Man from the Parish of *W.* to the Parish of *P.* &c. it was objected that this Order was naught, because it was upon Complaint to us made, &c. without saying

ing, Upon the Complaint of the Churchwardens and Overseers of the Poor, for a Man cannot be disturbed but by those who have Authority to do it, and tho' it appeared to be by the Churchwardens, &c. upon the Return of the Certiorari, yet that will not cure this Fault in the Order it self, wherein the Complaint was only *ex Officio*. Quash'd.

Orders have been quash'd for sending a poor Man to an *Extra-parochial* Place, for that the Justices have no Authority to send to or from such Places; but by the later Judgment it is otherwise; for 'tis now ruled that by Vertue of the Statute 13 & 14 Car. 2. cap. 12. the Justices may exercise the Powers given them by the Statute 43 Eliz. and by that Act all *Extra-parochial* Places (where there are more Houses than one, so that it may come under the Denomination of a Vill) may be taxed in Aid of a Parish, therefore 'tis reasonable that a Parish should aid an *Extra-parochial* Place. Salk. 486.

By the Statute of 13 & 14 Car. 2. cap. 12. upon Complaint by the Churchwardens and Overseers of the Poor to any Justice, within 40 Days after a poor Person came to settle in a Tenement under 10 l. two Justices might remove him to the Place where last settled for forty Days. Settlements. By 12 A. c. 13. made perpetual.

This Statute did not prevent clandestine coming into Parishes, for People would conceal themselves for forty Days, which made a Settlement; and therefore by another Statute, 1 Jac. 2. cap. 17. the forty Days were to be accounted from the Time of the Delivery of Notice in Writing to one of the Churchwardens or Overseers, and this must be of the House of his Abode, and the Number of his Faculty, if any. Anno 1685.

But this Act was not a sufficient Remedy against such Settlements; and therefore by 3 & 4 Will. & Mar. the forty Days Continuance is to be accounted from the Time of Publication of Notice in Writing, of the House of Abode, and Number of his Family. Anno 1692.

This is to be read in the Church by the Overseer or Churchwarden next Lord's Day after Divine Service, who neglecting to read, forfeits to the Parry grieved 40 s. Neglecting to register such Notice forfeits the like Sum, to be levied by Distress, &c. and for Want of Distress, may be committed for a Month without Bail.

Proof must be before one Justice by two Witnesses upon Oath.

None are to be relieved, whose Names are not registred in a Parish Book kept for that Purpose, unless by Authority under the Hand and Seal of a Justice of the Parish; or if none there, by a Justice in the Parts adjoining, or by Order of Sessions. Who are to be relieved and to be received.

But in Cases of pestilential Diseases, viz. Plague or Small Pox, in respect of their Families only, they are excepted. 3 & 4 W. & M. cap. 11.

8 & 9 W.
cap. 30.

He and his Wife and Children cohabiting in the same House, must have, on the uppermost Garment, and upon the Shoulder of the Right Sleeve, a large *Roman P.* and the first Letter of his Parish; or otherwise, one Justice, &c. upon Complaint, may cause his Allowance to be abridged or suspended, or may commit Offenders to the House of Correction, not exceeding twenty-one Days.

Officers relieving such who do not wear the Badge, forfeit 20 s. for every Offence; one Moiety to the Informer, the other to the Poor.

Proof is to be before one Justice, upon Oath of one Witness; Forfeiture is to be levied by Warrant of one Justice.

Church-wardens and Overseers refusing to receive one sent by an Order of two Justices, forfeits 5 l. to the Use of the Poor of the Parish from whence the Person is removed.

The Proof must be by two Witnesses on Oath before one Justice of the County to which the Removal was made.

The Forfeiture must be levied by Distress by Warrant of one Justice of the County to which he is removed, directed to the Constable where the Offender liveth, and for Want thereof may be committed for 40 Days.

May appeal to the next Sessions of the County from whence he is removed.

1 Geo. c. 8. It sometimes happens that Children are left by their Parents to the Charge of the Parish, who have something there to support them; therefore it was enacted, that the Church-wardens or Overseers where any Wife, Child or Children are left by the Husband or Parents on the Charge of the Parish where they were born, or last legally settled, upon Application to any two Justices, and by their Warrant to seize so much of the Goods and Chattels, and to receive so much of the Annual Rents and Profits of the Lands of the Husband, Father or Mother, as the said Justices shall direct for the Discharge of the Parish where such Wife, Child or Children are left, which Warrant or Order being confirmed at the next Quarter-Sessions, the said Sessions may make an Order to dispose of such Goods by Sale as they shall think fit, and to receive so much of the Rents and the Profits of the Lands as shall be ordered by the Court.

An Order of two Justices for the Removal of a Person from one Parish to another.

To the Church-wardens and Overseers of the Poor of the Parish of F. in the said County, and to the Church-wardens and Overseers of the Poor of the Parish of L. in the County of Surrey, and to each of them.

Suffex, ff. **U**Pon the Complaint of the Church-wardens and Overseers of the Poor of the Parish of F. unto us whose Names are subscribed, two of his Majesty's Justices of the Peace for the County of, &c. and one of us of the Quorum, that A. R. came lately to dwell in the said Parish of F. not having gained a legal Settlement there according to the Laws in that Case made and provided, nor produced a Certificate to them, owning him to be settled elsewhere; and that the said A. R. is now chargeable to the said Parish of F. and likely to continue chargeable so long as he dwelleth there: We therefore upon due Proof made thereof, as well upon the Examination of the said A. R. on Oath, as otherwise; and likewise upon due Consideration had of the Premises, do adjudge the same to be true; and we do likewise adjudge, That the last Place of the lawful Settlement of him the said A. R. was in the Parish of L. &c. We do therefore require you to convey the said A. R. from F. to the Parish of L. And we do also hereby require you the said Church-wardens and Overseers of the Poor of the Parish of L. to receive and provide for him as an Inhabitant of your Parish. Given under our Hands and Seals, &c.

Church-wardens and Overseers refusing to receive Persons thus removed, and to provide for them, may be bound over to the Sessions, and indicted for a Contempt. 14 Car. 2. 12.

A Warrant to apprehend a Person returning into a Parish from whence he was removed.

To the Churchwardens and Overseers of, &c.

Suffex, ff. **W**Hereas A. R. being in August last lawfully settled in the Parish of L. &c. did come into the Parish of F. in the County of, &c. not having given Notice to the Church-wardens and Overseers of the Poor of the Parish of F. of the Place of her Abode, the Number of her Family, nor otherwise acquired a lawful Settlement there; and upon Complaint made by the Officers of the said Parish of F. that the said A. R. was likely to be chargeable to their Parish, they obtained a Warrant to remove her, and accordingly did convey and remove her to the said Parish of L. since which the said

13 & 14
Car. 2. c. 12.
One Justice.

said A. R. did of her own Accord return to the Parish of F. from which she was removed: These are therefore to require you, or one of you, to bring the said A. R. before me, or some other Justice of the Peace of, &c. to shew Cause why she returned to the said Parish of F. and further to do and receive as to Justice doth appertain. Given under my Hand and Seal, &c.

The Punishment is, To be sent to the House of Correction to be whipt as a Vagabond. The *Mittimus* is as followeth:

A Mittimus for returning.

To the Constable of, &c. and the Keeper of, &c.

Suffex, ff. **A**S in the former Warrant to the Word (removed) These are therefore to require you, that you, or some or one of you, do forthwith convey the said A. R. to the House of Correction, and there to deliver her to the Keeper thereof: Requiring you also the said Keeper to receive her into your Custody, and punish her as a Vagrant. Given under my Hand and Seal, &c.

5 Mod. 163. Order to send a poor Man from R. to A. was quashed upon an Appeal, and upon a *Certiorari* the Sessions Order was quashed, and the original Order confirmed, so that now the poor Man was settled at A. but he of his own Accord returned to R. from whence he was first removed, and the Justices being of Opinion that they could not send him to the House of Correction, because the Original Order was not before them, it being removed by *Certiorari*; the Court of B. R. was mov'd for a Rule to enforce the Execution of the former Rule, by which the Sessions Order was quashed, but the Court directed that the former Rule should be shewed to the Justices together with the Original Order, and then if they refused to punish the Person thus returning, to make *Affidavit* of the Matter, and to move the Court again.

A Warrant to send a Wife and Children to her Husband, &c.

To the Churchwardens and Overseers of the Poor of the Parish of, &c.

Suffex, ff. **W**Hereas Complaint hath been made before us, That H. the Wife of J. O. an Inhabitant in the Parish of H. in the said County, is lately come into your Parish of L. and hath brought with her three Children of the said J. O. being all Infants, and that the said H. and Children are likely to be chargeable to the said Parish: These are therefore to require you, or some of you, forthwith, upon Sight hereof, to convey the said H. and Children

Pope. Posse Comitatus.

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to the Parish of H. aforesaid, and to deliver them to the said J. O. there to be settled with him according to Law; and if you do not find him there, then to deliver the said H. and the Children to the Overseers of the Poor of the said Parish of H. requiring you the said Overseers to provide for them as Inhabitants of your Parish. Given under our Hands and Seals, &c.

Pope.

HE who extols the Power of the Pope, by Writing, Printing, Preaching, Speaking, or by open Deed or Act advisedly done, or extols or defends his Power heretofore claimed and usurped in this Realm, or abets, procures, counsels, aids or comforts such Persons; for the first Offence, 'tis a *Præmunire*; for the second Offence, 'tis Treason: It must be certified by the Sessions before whom the Presentment was taken, within forty Days after into B. R. if in Term-time, if not, then the first Day of the next Term, otherwise every Justice before whom it was taken, forfeits 100 l. 5 *El. cap. 1.*

Those who print, buy or sell any Popish Primers, Lady's Psalters, in any Language, or other superstitious Books in *English*, or bring them from beyond Sea, forfeit 40 s. for each Book to the King, the Informer, and the Poor where the Book shall be found, to be divided into three Parts: Two Justices may search the House or Lodgings of a Popish Recusant, for Popish Books and Relicks, and may deface and burn them; but being of Value, may deface them and restore them to the Owner. 3 *Fac. cap. 5.*

Posse Comitatus.

THE Justices, in levying the Power of the County, may have the Assistance of all Laymen, under the Degree of Knights, and above fifteen Years of Age, and able to travel, upon Pain of Imprisonment, and Fine to the King.

But 'tis in the Discretion of the Justice how many, or how few he will have, and after what Manner they shall be armed.

One Justice may take the Power of the County to suppress Rioters.

Postage

Postage of Letters.

9 A. c. 19. **P**Ersons appointed to measure the Roads, shall be sworn to perform it according to the best of their Skill and Judgment, before some Justice of the Peace, who shall certify the same, to be entred in the three General Post-Offices of London, Edinburg and Dublin, without Fee.

The Post-Master General, and all Officers, Deputies, &c. in England, receiving the Sacrament according to the Church of England, and taking the Test, Oath of Allegiance and Supremacy, and the Abjuration, are qualified to act throughout the whole united Kingdom.

All Debts not exceeding 5 l. due for Postage of Letters or Packets, are to be recovered before two Justices of Peace, in such Manner as small Tithes are, and preferable in Payment before any other Debt to any private Person.

Note, The Post-Master General, and all concerned in the Post-Office under him, are to take the Oath hereunder, or be incapable of any Employment therein; and one Justice may administer the same.

I A. B. do swear that I will not wittingly, willingly or knowingly, open, detain or delay, or cause, procure, permit, or suffer to be opened, detained or delayed, any Letter or Letters, Packet or Packets, which shall come into my Hands, Power or Custody, by Reason of my Employment in or relating to the Post-Office, except by Consent of the Person or Persons, to whom the same is or shall be directed, or by an express Warrant in Writing, under the Hand of one of the principal Secretaries of State for that Purpose, or except in such Cases where the Party or Parties, to whom such Letter or Letters, Packet or Packets shall be directed, or who is or are hereby chargeable with the Payment of the Post or Posts thereof, shall refuse or neglect to pay the same and except such Letters or Packets shall be returned for Want of true Directions, or when the Party or Parties to whom the same is directed cannot be found; and that I will not any Way imbezil any such Letter or Letters, Packet or Packets, as aforesaid.

But by a former Statute it is provided, That if any Person not constituted by Patent, shall exercise any Thing belonging to the Post-Office, he forfeits 5 l. for every Offence, and 100 l. per Week to the Use of the King and the Informer, and to be recovered in the King's Courts.

That if any fail of a sufficient Horse in riding Post, the Post-Master General forfeits 5 l. and no Person is capable of executing that Office without taking the Oaths of Allegiance and

and Supremacy, which he may do before two Justices of Peace of the County, &c. 12 Car. 2. cap. 5.

Præmunire.

THIS Word is applied to Offences made by several Statutes; and where it is said that a Man incurreth a *Præmunire*, it is always intended that he shall have such Punishment which is to be inflicted on those who offend against the Statute of 16 R. 2. cap. 5. which is commonly called the Statute of *Præmunire*: The Judgment of which Offence is,

That the Offender be out of the King's Protection; that he forfeit his Lands and Tenements in Fee for ever, in Tail during Life, and his Goods and Chattels to the King, and that he be committed during the King's Pleasure. 3 Inst. 211. and if he be not in Prison, then *quod capiatur*. 2 Saund. 389, 390, 391, 392. Raym. 212, 374.

It hath been adjudged, That Suing in the Ecclesiastical Courts concerning a Thing meerly Temporal; as to excommunicate a Man for a Trespass, to sue there for a Debt, &c. this is a *Præmunire*. The Form of an Indictment and Judgment. 1 Vent. 171.

So to sue in the Admiralty for any Thing but what is done *super altum mare*.

But this rarely happens; so that the Judgment is now almost antiquated.

This Offence was formerly so odious, that a Man attainted in a *Præmunire*, might have been killed by any Person whatsoever, without any Danger of Punishment by the Law; for such Men were out of the King's Protection; but now by the Statute of 5 Eliz. car. 1. 'tis made Felony to kill one attainted by a *Præmunire*.

Presentment.

THIS is an Accusation of the Jurors without any Bill brought before them; and it differs from an Indictment for that is always the Verdict of a Jury upon a Bill drawn up in Writing, and offered to them.

Pretended

Pretended privileged Places.

HE who knowingly and willingly shall obstruct or oppose any Person to execute any legal Process or any Warrants of Justices, or shall assault or abuse another in executing the same, or for having so done, whereby he shall receive any Damage or bodily Hurt, and being convicted thereof shall be guilty of Felony, and be transported.

On Complaint to three Justices of *Surrey*, by a Creditor of any Person in the *Mint*, and who hath taken out a legal Process against such Minter, and making Oath before the said Justices that a Debt not exceeding 50 *l.* is due to him, and that he believes such Person resides in the *Mint*: The said Justices may grant a Warrant to the Sheriff of *Surrey* and his Bailiffs, requiring them to raise the *posse Comitatus*, or such Force as they think fit, and enter the *Mint*; and upon Resistance to break open the Doors upon *mesne Process* to arrest the Person, and to seize the Goods upon an Execution, &c. the Sheriff refusing, &c. shall forfeit 200 *l.* to the Plaintiff to be recovered by Action of Debt, &c.

9 G. c. 28. Resisting an Officer, or rescuing a Prisoner, or concealing him or any of the Rescuers, and being thereof convicted within six Months after the Offence, shall be guilty of Felony, and be transported.

See the Statute at large.

Prison. See Gaol.

A Prison. **I**S a Place where a Man is restrained of his Liberty, to answer an Offence done against the Law.

The Commitment must be by a Judge of Record, and by a lawful Warrant.

There are several Sorts of Prisons, viz.

5 H. 4. c. 10.
11 & 12 W.

1. The Common Gaol, and to this Place Justices must commit Murderers and Felons, and not elsewhere.
2. The Stocks.
3. The Prison of a Lord of Franchise.
4. The Custody by any who hath lawfully taken the Offender, or the House of a Constable, or other Person, where a Prisoner is lawfully detained.

A Felon escaping from any of these Places, makes it a Breach of Prison.

There must be an actual Force; for if he go out, the Doors ^{Breaking} being open, it is not Felony; neither is it material that 'tis the ^{it by a Fe-} King's Prison, for if 'tis the Constable's House 'tis sufficient. ^{lon.}

Rescuing him to bring him away, is Felony in the Rescuer. If the Gaoler permits a voluntary Escape, 'tis Felony in him; but if the Escape is negligent, and not voluntary, 'tis Felony in the Prisoner, and a Misdemeanour only in the Gaoler.

If the Prisoner is of Ability, he must bear his own Charges, and of those who are appointed to carry him to Gaol, and if he refuse, then it may be levied by the Headborough of the Parish, by Warrant from the Justice who committed him, by Distress and Sale of his Goods after an Appraisment by four of the Inhabitants.

If he is not of Ability, then the Charges must be born by the Parish where he was taken, by a Tax made by the Constable, Churchwardens, and two or three of the Inhabitants, to be allowed by a Justice of the Peace. 3 Jac. c. 10.

An Indictment against a Prisoner for escaping by Force from a Constable.

Suffex, ff. **J**UR, &c. quod T. D. de H. in Com' pred' Yeoman, Constabular' dict' Dom' Reg' Hundredi sui de L. in Com' pred' quendam J. O. nuper de H. pred' in Com' pred' Labourer, 20 die Augusti, Anno Regni, &c. cepit & arrestabit apud B. infra Hundred' pred' pro suspitione ejusdam felonie, viz. (Here express the Felony) & ea de causa idem J. O. sub custodia dicti T. D. Constabularii pred' coram H. D. Ar' un' Justiciar' dict' Dom' Reg' ad pacem, &c. conductus fuit & per preceptum prefat' H. D. pred' T. D. & aliis direct' idem H. D. mandavit prefat' T. D. convehere sibi adducere pred' J. O. ad Gaolam dict' Dom' Reg' Com' S. pred' ibidem salvo & sectore custodiri quousque inde legitimo modo deliberat' foret, virtute ejus quidem precepti idem J. O. per prefat' T. D. captus & detentus fuit & ad Gaolam pred' adducturus postea scilicet die & anno supradictis apud H. pred' in Com' pred' vi & armis, &c. extra custodiam prefat' T. D. Constabularii predict' ac contra voluntatem suam felonice evasit contra pacem, &c.

For breaking a Gaol, and letting out other Prisoners.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pzed' Labourer, 24 die Augusti, Anno Regni, &c. apud H. in Com' pzed' arrestat' & imprisonat' fuit & Gaole dict' Dom' Reg' apud H. in Com' pzed' pro diversis felonis per ipsum perpetrat' 24 die Augusti, Anno supradicto, vi & armis, &c. quodque ipse pzed' Gaolam dict' Dom' Regis apud H. pzed' in Com' pzed' fregit & R. S. de, &c. & T. B. de, &c. Labourers, prisonarios in eadem Gaola eristen' adtunc & ibidem felonice ad largum ire permisit contra pacem, &c.

Process.

IT is called so, because it proceedeth upon former Matter, either Original or Judicial, and when taken in a larger Sense, it comprehends all the Proceedings; but 'tis usually after an Indictment found, and is always in the Name of the King, directed to the Sheriff, and *Teste* by the Justice: The Justices have Power by the express Words of their Commission, to make Process upon Indictments of Felony, or Trespasses; but where a Man is indicted in one County who liveth in another, there must be an *Alias* after the first *Capias*, before he can be *Outlawed*, and there must be three Months between the *Teste* and Return thereof. 8 H. 6. cap. 10.

There is a Proviso in this Statute, That Process shall go out as usual, when the Party is indicted in the same County where he liveth; that is, If it be for Felony, and the Party not in Custody, the Justices may award a *Capias*, and then an *Exigent*; but if in Custody, they may award Process to try the Offender the next Day.

If it is for Trespass, then there must be a *Venire Facias*, &c. and if *Nihil habet*, &c. a *Capias*, *Alias*, and *Pluries*, and so to the *Exigent*; but if he is returned Summoned, then a *Distingas* must issue if he doth not appear, and so *infinite* till he come.

Sometimes Process is given by particular Statutes; as per Statute of 5 Eliz. cap. 4. the Justices may award several *Capias*'s to a Sheriff or Officer of another County where a Servant or Apprentice in Husbandry departs from his Master.

Per 5 Ed. 6. cap. 11. Justices may award Process to a Sheriff of another County, in Cases where the Offenders are indicted for Felonies in Counties where the Facts were done, but not where they live.

Prophecies. Purveyance.

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If a Man is indicted for *Murder*, there shall be but one *Capias*, and then an *Exigent*.

But 25 *Ed. 3. cap. 14.* if for Robbery, there shall be two *Capias's* before the Outlawry.

These Processes may be stayed by *Supersedeas* issuing from the Justice, setting forth that the Defendant came before him, and hath found Sureties for his Appearance to answer the Indictment, or to pay his Fine.

Prophecies.

Publishing by Writing, Printing or Speaking any false Prophecy, to make any Disturbance, &c. the Offender being lawfully convicted, shall be imprisoned for a Year without Bail, and forfeits 10 *l.*

For the second Offence, being convicted, &c. shall be imprisoned for Life, and forfeits all his Goods.

One Moiety of these Forfeitures to the King, the other to the Prosecutor. 5 *Eliz. cap. 15.*

Purveyance.

By the Statute of 12 *Car. 2. cap. 24.* no Person by Colour of Purveyance for the King, &c. shall take any Thing from the Subject without the Owner's Consent.

Any Justice of the Peace, or the Constables of the Place, may commit the Offender, who by Colour of any Warrant under the Great Seal, or otherwise, shall make Purveyance, &c. there to remain till the next Sessions, and the Party shall recover treble Damages and treble Costs.

Indictment thereon.

Suffex, ff. **J**UR', &c. quod 24 die Augusti, Anno Regni, &c. quidam J. O. nuper de H. in Com' pzed' Labourer, apud L. in Com' pzed' coloze Purveyancie pzo dict' Dom' Reg' quinque obes precii quadraginta solidorum de Bonis & Catallis R. B. adtunc & ibidem erissen' inventos injuste & illicite cepit & abduxit contra voluntatem ipsius R. B. & contra pacem dict' Dom' Reg' necnon contra formam statuti in hujusmodi casu edit', &c.

O_o

Quaker.

Quaker. See Tithes.

7 & 8 W.

NO Quaker shall be permitted to give Evidence in any criminal Causes, or serve in Juries, or bear any Office or Place of Profit in the Government.

By this Act, their Affirmation is to go for an Oath.

I A. G. do declare in the Presence of God, the Witness of the Truth of what I say.

And if what he affirms is false, he shall be punished as in Cases of Perjury.

To continue for seven Years, &c.

This Act made perpetual by Stat. 1 *Georgii cap. 7.* and the Remedy for Recovery of *small Tithes*, and Church-Rates is extended against *Quakers*, for Recovery of any Tithes or Church-Rates, or any other customary Rights belonging to any Church, which by Law or Custom ought to be paid to the Minister; the Proceedings are to be as by that Act, and the Justices may allow *Costs*, not exceeding 10 s.

8 Geo. cap. 6.

By the Statute 8 *Geo. cap. 6.* instead of the solemn Affirmation and Declaration in the Statute 7 & 8 *Will.* he shall make the solemn Affirmation and Declaration following, (*viz.*) *I W. R. do solemnly, sincerely and truly declare and affirm, &c.* and instead of the Form prescribed by 1 *Geo. cap. 6.* for the Oath of Abjuration, he shall take another, (*viz.*) *I W. R. do solemnly, &c.*

Quarentine.

9 A. c. 2.

WHen any Foreign Countries are infected, all Ships coming thence are to make their Quarentine in such Places, Time and Manner as the King shall appoint; and until they are discharged thereof, no Person or Goods therein shall come on Shore, or into any other Ship, &c. nor shall any go on Board such Ship without Licence in Writing, under the Hand of such Person who shall be appointed to see the Quarentine performed: And all Ships, Persons and Goods, &c. during such Quarentine, shall be subject to such Orders and Directions therein, as shall be made by the King and notified by Proclamation; and if any Master or Commander of such Ships, &c. shall go himself on Shore, or on Board any other Ship,

Ship, or suffer any of his Men, &c. till his Ship be discharged, without such Licence, such Ship with her Tackle, Apparel and Furniture shall be forfeited to the King. And if any Person arriving in such Ship shall quit the same, by going on Shore, or on Board any other Ship during the Quarentine, the Person appointed to see it performed may compel him, in Case of Resistance, by Force to return on Board, there to remain, &c. And after the Quarentine, if thereof convicted by one Witness before one Justice, forfeits not exceeding 20 *l.* to be paid to the Justices, who at Discretion are to reward the Informer thereof not exceeding one Third, and pay the Residue, after Charges deducted, to the Poor of the Parish where the Conviction was: And in Default of Payment, the Justice may commit to the House of Correction to hard Labour, not exceeding one Month.

And the Justices of the several Counties adjoining to Places where Quarentines are to be performed, or one of them, shall on appointing the same, forthwith cause Watches to be kept Day and Night in the most proper and convenient Places in the adjacent Parishes, with strict Orders to them. And they are required not to permit any Person whatsoever to come on Shore from, or go on Board any such Ships, except such only as have the Charge of seeing the Quarentine performed, or be licensed as aforesaid.

After the Quarentine performed, and Oath made by the Master, or Persons having Charge of the Ship, and two of the Persons belonging thereto, before the Customer, Controller, or Collector of the Port, or their Deputies, or any Justice of Peace near adjoining, *That such Ship or Vessel, and all and every the Person and Persons therein, have duly performed the Quarentine, and that the said Ship or Vessel, and all the Persons on Board are free from Infection,* the said Customer, &c. or the said Justice, are to give a Certificate thereof, and thereupon the said Ship, &c. to be liable to no further Restraint, &c. And the Officer, &c. before whom the Oath is made, and by whom the Certificate is given, shall demand no more than 1 *s.* for each, besides the Stamp-Duties.

And after the Quarentine, the Goods imported are to be opened and aired, &c.

Rape. Vide Rape in Felony.

* In *Bra-*
den's Time
the Punish-
ment was
Loss of
Eyes and
Genitalia,
because ca-
lorem stupri
induxerunt.

THIS is * Felony at Common Law, committed by Force upon a Woman by carnally knowing her, she never consenting thereunto, either before or after the Fact.

For if she consented after the Fact, 'tis still a Rape; and tho' she will not prosecute, yet the Husband may; and if she have none, then the Father or next of Kin may appeal.

In Scotland, the Woman ought to complain the same Day or Night in which she was ravish'd; and by our Law she ought to complain in forty Days afterwards, but rather immediately, for Concealing it implies a Consent before the Fact.

Those who assist in committing a Rape, being present, are 12 Rep. 37. Savil. 42. Principals.

An Indictment for a Rape.

It was my Lord Audley's Case.

Wilts, ff. **J**UR', &c. quod Martinus Dominus Audley, nuper de Fountel Gifford, in Com' W. & Egidius Broadway, de F. G. pzed' in Com' pzed' Gen' timorem Dei pre oculis suis non habentes sed instigatione diabolica moti & seducti 20 die Junii, Anno Regni, &c. apud F. G. pzed' in Com' pzed' vi & armis, &c. in & super Annam Dominam Audley, uxorem prefati Martini Domini Audley, in pace Dei & dia' Dom' Reg' ibidem existent' insult' fecerunt & pzed' E. B. pzed' Annam Dominam Audley vi & armis contra voluntatem ipsius Annæ adtunc & ibidem violenter & felonice * rapuit ac ipsam Annam adtunc & ibidem contra voluntatem suam violenter & felonice carnaliter cognovit contra Pacem, &c.

* It must
be charged
expressly by
this Word,
1 Inst. 124.

Et ultra iur', &c. quod pzed' Martinus Dominus Audley, pzed' 20 die Junii, Anno sexto supradicto apud F. G. pzed' in Com' pzed' felonice fuit pzelens auxilians & confortans, abetans, procurans, adsubans & manutenens pzed' E. B. ad feloniam pzed' in forma pzed' felonice faciend' & perpetrand' contra Pacem, &c.

Indict-

Indictment for a Rape.

Suffex, ff. **J**UR', &c. quod J. G. de H. in Com' pzed' Labourer, Deum pze oculis non habens sed instigatione diaboli motus & seductus 24 die Augusti, Anno Regni, &c. vi & armis, &c. ar id L. in Com' pzed' in et super quandam A. P. * etatis octo decim Annozum in pace Dei & dict' Dom' Reg' adtunc & ibidem existen' felonice insultum fecit & eandem A. P. adtunc & ibidem contra voluntatem & sine consensu pzed' A. P. felonice rapuit (Anglice, did ravish) & carnaliter cognovit contra Pacem dict' Dom' Reg' nunc Cozonam & Dignitatem suas necnon contra formam Statut. in hujusmodi casu edit' & probis.

** If under ten Years, then say, Puellam infra etatem decem Annorum tum existen. insultum fecit*

& adtunc & ibidem eandem A. P. felonice ac carnaliter cognovit ac eandem A. P. nequiter abusus est contra pacem, &c. Dyer. 304.

It was a Doubt whether a Rape could be committed on a Girl of seven Years old; but if she had been nine Years, it was no Question. *Dyer 304.*

Anno 9 Car. One *Martin Page* was indicted at the Old Baily, Cro. Car. for that he carnaliter cognovit an Infant, under the Age of † ten Years. At his Trial the Jury would not find him guilty, because it was not proved he entered the Body of the Child; but he having very much abused her, the Court ordered an Indictment of Battery to be exhibited against him, which was tried at the Bar; and he was found guilty, and fined 100 Marks, and ordered to stand in the Pillory, &c. and to be bound with Sureties for his Good Behaviour during Life, and committed during the King's Pleasure.

† If under ten Years, then, though she consent, 'tis a Rape, by 18 Eliz. cap. 6. If above ten Years, then not

consenting at first, tho' she consent afterwards, is likewise a Rape. No Clergy, 18 Eliz. cap.

If a Woman consenteth for Fear of Death 'tis a Rape, because the Consent ought to be free and voluntary.

In an Appeal of Rape by Vertue of the Statute *Westm. 2 cap. Dier 201.* 34. it was objected that the Appellant had counted, that on such a Day, and in such a Year and Parish, the Appellee *eam rapuit & carnaliter cognovit*, without saying *felonice*, neither did She aver, that she did not consent either before or after the Fact, and for this Reason it was held ill.

Actions of Conspiracy against several for conspiring to charge the Plaintiff with a Rape, it must be laid in the Declaration, that the Plaintiff was not *recenter persecutus*, because if he was not, it argues that the Woman consented, therefore because

Rape. Recognizance.

Plaintiff was not indicted in a short Time after the Fact supposed to be committed, but the Concealing it for half a Year, and then would have preferred an Indictment against him, this was held to be false and malicious.

Anno 1 Georgii, a Woman went for her Husband to a Bailiff's House, and being shewed the Rooms by one *Sarah Blandford*, in the Company of *Leefin* who lodg'd in the House; the said *Blandford* lock'd them in a Chamber, and went away laughing, and then *Leefin* ravished her. The Evidence was *Mrs. May*, the Woman her self who cried out, and no Body came to her Assistance; and that when the Door was open, she immediately complain'd of the Injury. But the Evidence for the Prisoner was, that immediately after she came down Stairs, there was an open Familiarity between her and the Prisoner, and therefore it could not reasonably be intended that they should have a Difference so lately, which concerned his Life; and tho' a Woman cannot be ravished by one Man, without some extraordinary Circumstances of Force, yet the Jury found them both guilty; but they were both pardoned.

Recognizance.

THIS is a Bond of Record, testifying, That the Party oweth to the King a certain Sum, &c. upon the Non-performance of a Condition.

'Tis Matter of Record as soon as it is taken or acknowledged, tho' it be not made up, but only entered in the Justice's Book; and therefore for a Breach of it an Indictment will not lie, but a *Scire facias*. *Raym.* 196.

When you take a Recognizance, it must be made in *Latin*, but the Condition is usually in *English*; the Name, the Place of Abode, and the Trade or Calling both of the Principal and Sureties are to be punctually set down; and the Principal is to be bound in double the Sum which the Sureties are bound in.

When 'tis entered or made up, you read the Condition to the Parties bound, calling them by their Names, thus:

You acknowledge to owe unto our Sovereign Lord the King, &c.

These Recognizances are to be engrossed in Parchment, to which the Justice subscribes his Name, but the Persons bound need not set their Names to it.

Where a Justice has Power to take a Recognizance, if the Party refuse to be bound, he may commit him. 11 *Rep.* 52.

'Tis

'Tis expedient for the Justice to keep a Book, in which he ought to enter his Recognizances thus :

J. O. de H. in 20 l. ad comparend. ad proximas Assisas or Session. *Pacis* (as the Case is) bound over for the suspicious Stealing of an Horse from R. S.

Sureties { B. W. de L. } 10 l.
 { R. N. de B. }

This is discretionary in the Justice, before whom the Recognizance is acknowledged, and when once taken, if he is deceived in the Ability of the Sureties, he may compel the Party to put in more; but this is when the Recognizance is taken *ex Officio*, and not by Vertue of a *Supplicavit*.

If the Sureties die, the Recognizance is good against their Executors; but the Justices can award no Process upon it, for it must be certified into a higher Court.

These may not enter into Recognizance, but their Sureties Feme Covert, and only, if 'tis for keeping the Peace.

Justices cannot award Process, but these Records must be certified into B. R.

These are to be certified, notwithstanding the Death of the King, or Death of the Cognizor, or of the Party at whose Suit they are taken; nay, though they are released.

If they concern the Evidence against Felons, they must be certified the next Gaol Delivery. 2 & 3 Ph. & M. cap. 10.

Armour, going armed.
Assaulting any one.
Battering Persons.
Burglary, committing it.
Imprisonment, if false.
Man slaughters, and the Procurers.
Murdering any one.

Peace, breaking it.
Ravishing of a Woman.
Robbery committed.
Riotously assembled.
Threatning in the Presence.
Treason done.
Wounding, tho' at Play.

See Recognizance in Title Behaviour. What Acts shall be a Forfeiture.

And generally whatever is a Breach of the Peace, is a Forfeiture of the Recognizance.

A Man was bound in a Recognizance for his Good Behaviour, and being afterwards taken by a Constable upon a Suspicion of Felony, he escaped: Adjudged that no Felony was committed, and tho' the Constable took him wrongfully, yet his *Escape is a Misbehaviour*, and by Consequence his Recognizance is forfeited. Godb. 22; 2 Leon. 166.

But opprobrious Words, as to call a Man a Lyar, Knave, &c. are not a Breach of the Good Behaviour, so as to make a Man forfeit his Recognizance; for tho' such Words may be Provocations to break the Peace, yet they do not immediately tend to it, as Assaulting and Threatning do. Cro. Eliz. 89. 4 Inst. 180, 181.

What nor;

Beating, in Defence of his

Child.
Father.
Goods.
Master.
Mother.
Possessions.
Way, in Defence thereof, if ancient.

Discharge
thereof.

If not forfeited, 'tis discharged by the Demise of the King, or Death of the Cognizor.

By a Release of the Party *ore tenus*, or by the Justice himself, to be written under the Recognizance; the Form thereof see in *Release*, Title *Behaviour*.

The Form of the Release of the Party is.

Suffex, ff. **M**emozand' quod 27 die Augusti, Anno Dom' 1710. J. O. venit coram me W. N. Arm' un' Justiciar' Dom' Reg' ad pacem in Com' pzed' conserband' assign' & gratis remisit & relaxabit quantum in se est pzed' securitatem pacis per ipsum versus pzedat. R. R. petit. In cujus rei Testimonium ego pzedat W. N. huic relaxationi sigillum meum apposui. Datum, &c.

This Release being certified by the Justice, the Person is discharged from Appearance, because the Recognizance was to preserve the Peace; which being discharged by the Release, the Appearance is likewise discharged.

A Recognizance.

See before
Tit. Bail
and Beha-
viour.

Suffex, ff. **M**emozand' quod 27 die Augusti, Anno Regni Domini nostri Georgii, &c. quarto, J. O. de H. in Com' pzed' Yeoman, & T. P. de H. pzed' Husbandman, & R. B. de H. pzed' Husbandman, personaliter venerunt coram me W. N. Arm' un' Justiciar' dict' Dom' Reg' ad pacem in Com' pzed' conserband' assign' & recognoverunt se debere dict' Dom' Reg' videlicet pzed' J. O. & T. P. separatim in decem libris & pzed' R. B. in viginti libris bone & legalis monete Regne Britannie de bonis & catallis terris & tenementis suis separatim fieri & levare ad opus dicti Domini Regis Hered' & Successorum suorum si R. B. pzed' defecerit in conditione infra scripta,

A Condition for Breach of the Peace.

THE Condition of this Recognizance is such, That if the above-bounden R. B. shall personally appear in Court at the next General Quarter-Sessions of the Peace, to be held, &c. to answer unto such Matters as shall be then and there objected against him by R. S. of, &c. concerning an Assault and Battery, lately made upon the said R. S. by the above-bounden R. B. and concerning some other Misdemeanours tending to the Breach of the Peace; and that if he do not depart without Leave of the Court, then his Recognizance to be void, otherwife to be and remain in Force and Vertue.

A Condition for a Misdemeanour.

Midd' ff. **T**HE Condition of this Recognizance is such, That if the said J. O. shall personally appear before the Justices of the Peace, at the Sessions of the Peace to be held for, &c. and shall then and there answer unto such Misdemeanours which shall be objected against him, and that he doth not depart without Leave of the Court, then this Recognizance to be void,

Condition to prefer a Bill and give Evidence.

THE Condition of this Recognizance is such, That if the within bounden A. B. do personally appear before his Majesty's Justices of * Gaol-Delivery, at the next General Assizes to be held for * If at the the within named County of S. and do then and there prefer, or cause Sessions, to be preferred, a Bill of Indictment against W. N. for the Matters then instead of wherewith he is charged before W. B. and J. D. his Majesty's Justices within named; and do also then and there give Evidence contrary say, cerning the same, as well to the Jurors, as shall enquire thereof on Sessions of Behalf of our Sovereign Lord the King; as also to the Jurors that the Peace. shall pass upon Trial of the said W. N. for the same. Then this Recognizance to be void.

If it be only to give Evidence, then after then and there, and give such Evidence as he knoweth against T. B. concerning the Matters wherewith he is charged, as well to the Jurors, &c.

Recusants.

One Justice
out of Sessi-
ons may take
Recogni-
zance of

Alehouse-keepers, suffering unlawful Games,
and selling of Ale without Licence, viz. to
appear at Sessions.
Behaviour, to be of Good Behaviour.
Hawkers in Corn, to appear at Sessions.
Logwood, suspected Persons using in Dying.
Partridges, those who take them, to appear.
Peace, those who break it.
Pheasants, convicted of destroying them, viz. not
to offend again.
Witnesses against a Felon, to appear at Sessions.

There are other Recognizances which are not proper to be
mentioned here, and it hath been said to be a great Misdemean-
our to intice an Infant to enter into such Recognizance for
Goods, knowing him to be an Infant; for which Offence one
Hicks was fined 100 l. and committed.

Moor 555.

Recusants.

ARE those who refuse or deny Supremacy to the King, by
adhering to the *Pope* as supreme Head of the Church.

Before I enter upon the Statutes which inflict Penalties upon
them, I think it requisite to acquaint the Reader with the
Progress made by H. 8. in reducing the Power of the Court
of Rome here.

Anno 24 H. 8. cap. 12. the Parliament prohibited *Appeals* to
Rome, declaring in the Preamble, That the Crown of England
was imperial, and that the Nation was a complete Body with
a full Power to administer Justice in all Cases.

35 H. 8.

The next Year he appointed, That *Convocations* should be as-
sembled by his Writ, and that no *Canons* or *Constitutions* should
be executed, which were contrary to his Prerogative, or to
the Laws of the Land.

In the same Year, an Act passed to restrain the Payment of
First-Fruits to the Court of Rome; and this being an apparent
Diminution of their Revenue, was the Foundation of that
Breach which afterwards followed between the King and that
Court.

Hist. Re-
form. Vol.
1. fol. 111.

The Learned Bishop of *Sarum* tells us, That the Parliament
being unwilling to go into Extremities, did remit the final Or-
dering this Act to the King, viz. That if the *Pope* at a Time
prefixed, should either mitigate or put down the Payment of
these *Annates*, that then the King by his Letters Patent might
declare how much of the Act should be in Force, which was
to take Effect accordingly.

But

But I do not find the Pope complied; and therefore in the 26 H. 8. next Year an Act passed, by which the *First-Fruits* of all Spiritual Livings were given to the King, &c.

In the same Year an Act passed, prohibiting *Investitures* of Archbishops or Bishops by the Pope; and that in a Vacancy the King should send his *Letters Missive* to the Prior or Convent, Dean or Chapter, to chuse another.

Likewise in the same Year, all *Licences* and *Dispensations* from the Court of Rome were prohibited, under Pain of *Pramunire*; and that *Religious Houses* should be under the *Visitation* of the King, by Commissioners to be appointed under the Great Seal.

But the *Supremacy* was not yet settled; for in a Session of Parliament, Anno 1534. which was in the 26th Year of his Hist. Re.
form. 157. Reign, he was then declared to be *Supreme Head of the Church*.

But he did not exercise any Act of that Power till a Year afterwards, by appointing Sir *Thomas Cromwell* to be his Vicar-General in Ecclesiastical Matters, and Visitor of all the *Monasteries* and other privileg'd Places in the Kingdom. This was the first Act of *Supremacy*.

These Places were visited; and the next Year, which was 27 H. 8. Anno 1536. (the Parliament meeting in February 1535) all the lesser *Monasteries*, under the Number of twelve Persons, and whose Revenues were not of the Value of 200 l. per Ann. were given to the King, his Heirs and Successors; and a Court was erected on Purpose for Collecting the Revenues belonging to these *Monasteries*, which was called *The Court of Augmentations of the King's Revenue*, who had full Power to dispose of those Lands for the Service of the King.

They proceeded in this Manner, viz. One Auditor of that Court was to call to his Assistance three discreet Persons of the County where the *Monasteries* were, and these were to acquaint those Houses with the Statute of *Dissolution*.

Then they were to give the Governor or any other Officer of the House an Oath, to declare the State and Condition thereof, and to require them to appear before the Court at a certain Day; and in the mean Time, not to meddle with any Thing belonging to the House, except for necessary Subsistence, till farther disposed.

When he appeared before the Court, they were to assign him an Yearly Pension for Life,

These Persons were likewise to enquire into the Number of *Religious* in the House, and what Lives they led; how many would go into other Religious Houses, and how many into the *World*, as they called it.

They are to take an Account of the Buildings and Number of Servants belonging to the House; they were to secure the Seal of the Convent, and the Writings, Jewels and Plate, and all other moveable Goods; and so take an Inventory thereof, &c.

The

The Whole of these Goods were valued at 100000 *l.* and the Rents of these small Monasteries came to 30000 *l. per Annum.*

This occasioned great Discontent amongst the People, complaining of the Injustice of this Suppression, but to satisfy the Gentry, *Cromwell* advised the King to sell these Lands to them at low Rates, obliging them to keep up Hospitality.

This pleased both them, and the ordinary Sort of People for a little Time; and to satisfy others, there was a Clause in the Act, which gave the King Power to continue such Monasteries as he should think fit; by Vertue of which Power, he continued or gave back 31 Houses: But these, about two Years afterwards, fell under the common Fate of the great Monasteries, and were all suppressed with them.

But notwithstanding he gave back some of the Houses, yet the People were still discontented, and openly rebelled in *Lincolnshire*, which was quieted by a Pardon: There was another Rebellion in *Yorkshire*, and the Northern Counties, which ended also in a Pardon, only some of the Chief of the Rebels were executed for this last Rebellion.

The King being then free from Apprehensions of more Rebellions, appointed a new Visitation of all the Monasteries in *England*, there being but few suppressed by Vertue of the Act before mentioned, because (as it is believed) the Visitors being to make Report to the Court of Augmentations, of the State and Condition of the Monasteries they had visited, and after the Report made, a new Commission being to issue forth to suppress them, it happened that these Reports were made but a very little Time before the Rebellion broke forth; so that 'tis probable few of these Commissions were executed, because that would have enraged the People, and added Numbers to the Rebels.

29 H. 8.

But most of them seeing their Dissolution drawing near, made voluntary Surrenders of their Houses in the 29th Year of H. 8. in Hopes by this means to obtain Favour of the King; and after the Rebellion upon the second Visitation, the Rest of the Abbots, both great and small, did the like; for some of them had encouraged the Rebels, others were convicted by the Visitors, of great Disorders, and most of them had secured all the Plate, Jewels, and Furniture belonging to their Houses, to make Provision for them and Relations, and then surrender'd their Monasteries; so that the greatest Part of them were voluntarily given up to the King.

31 H. 8.
cap. 13.

Afterwards, *Anno* 31 H. 8. a Will was brought into the House of Peers to confirm these Surrenders. There were 18 Abbots present at the first Reading it, 20 at the second Reading, and 17 at the third: It soon passed the Commons, and the Royal Assent; and by this Act reciting the voluntary Surrenders, &c. all the Houses, which from the 14th of *Febr. Anno* 27 H. 8. (which was the Time when the first Act passed, giving all the
small

small Monasteries to the King) and all belonging to them, which were since that Time suppressed, dissolved, relinquish'd, forfeited or given up, and all those which should be suppressed, &c. were confirmed to the King, his Heirs and Successors.

'Tis true, the Hospitallers, Colleges and Chanteries, &c. were not yet dissolved; the Hospitallers were those of St. John of Jerusalem, which consisted of a Prior and his Fraternity, of which the Prior and two Chaplains were bound to be Churchmen; these had large Endowments to support themselves, and to entertain Pilgrims; the other Foundations were made up with Secular Priests, who had Pensions for to say Masses for the Souls of the Founders.

But notwithstanding the King was declared to be the Supreme Head of the Church; yet these Hospitallers would not submit, but maintained the Supremacy of the Pope against him, and abused his Majesty and the Parliament for making that Law, by which that usurped Power of the See of Rome was extinguished; and therefore, Anno 32 H. 8. the Parliament ^{32 H. 8.} gave their Lands to the King, and dissolved their Corpora-^{cap. 24.} tion.

The Colleges and Chanteries still remained; but the Doctrine of Purgatory being then grown out of Belief, and some of those Fraternities having resigned in the same Manner the Monasteries had done before them, the Endowments of the Rest were then thought to be for no Purpose; and therefore Anno 37 H. 8. all these Colleges, free Chapels, Chanteries, &c. were ^{37 H. 8.} given to the King, his Heirs and Successors, by Act of Parlia-^{cap. 4.} ment.

Thus in the Compass of a few Years, the Power and Authority of the See of Rome was suppressed in this Kingdom: And because frequent Attempts have been made by Papists to revive it, therefore in succeeding Times several Laws have been made to keep them in Subjection, which I shall only mention.

Recusant Convict, above 16, must go to his Place of Abode, Abjuration. and not remove five Miles without Licence; or otherwise, not being a Feme-covert, and not having Lands worth 30 Marks per Annum, or Goods worth 40 l. and not making the Submission mentioned in 35 Eliz. cap. 2. being required by a Justice of the Peace, must abjure before two Justices, &c.

Not departing within the Time limited by the Justices, or returning without the King's Licence, is Felony without Clergy. 35 Eliz. cap. 3.

Must go to his Place of Abode, and not remove, as before; Abode. the Forfeiture is Goods for ever, and Lands during Life, tho' Copyhold; but in this last Case, the Lord of the Manor, if no Recusant or Trustee for him, shall have the Forfeiture; if the Lord be a Recusant the King shall have it. 35 Eliz. cap. 2.

If he hath no Place of Abode, must go to the Place of his Birth, or where his Parents live, and within twenty Days after, give his Name to the Minister, or Constable, &c. who is to enter it in a Book, and certify it to next Sessions. 35 *Eliz.*

c. 2.

But he may go as far as he hath Licence from the four next Justices, under their Hands and Seals, with the Assent of the Bishop, or Deputy Lieutenant, first making Oath of the true Reason of his Journey. 3 *Fac. cap. 1.*

Absolve.

To absolve, or be absolved by Bulls from the Bishop of Rome, is High Treason; Accessories before the Fact are guilty of the same Offence. 13 *Eliz. cap. 2.*

Pretending Power to absolve any within the King's Dominions from their natural Obedience, &c. guilty of Treason. 23 *Eliz. cap. 1.*

Advowson.

Shall not be granted by a Popish Recusant Convict, whilst under Conviction. 3 *Fac. 1. cap. 5.*

If such Recusant grant the Advowson for Years to a Friend in Trust, the Grant is void.

Any Papist or Popish Recusant convicted, as *per Statute* 3 *Fac. cap. 5.* or disabled by refusing or neglecting to repeat and subscribe the Declaration mentioned in an Act, 30 *Car. 2. cap. 1. viz. I H. G. do solemnly, &c.* when tendered by two Justices of the Peace, or forbearing to appear before them upon Notice to him given, or left at the usual Place of his Abode, by any one who hath Authority so to do, by Warrant under the Hands and Seals of the said two Justices, and shall thereupon have his Name, Surname, and usual Place of Abode, certified and recorded at the General Quarter-Sessions, shall be disabled to grant an Advowson. 1 *W. & M. cap. 26.*

Person seised in Trust for such Offender, shall be likewise disabled to make such Grant. 1 *W. & M. cap. 26.*

Trustee or Mortgagee, presenting or causing to be presented, to any Living, the Trust whereof shall be for a Recusant Convict, or disabled, without giving Notice to the Chancellors of Oxford or Cambridge, &c. within three Months after Evidence, forfeits 500 l. to the respective Chancellors. 1 *Will. & Mar. cap. 20.*

Agnus Dei. Bringing an *Agnus Dei* hither, or offering it to any Person to be used, both he and the Receiver incurs a *Pramunire*. 13 *Eliz. cap. 2.*

Armour.

Of Popish Recusant Convict, shall be taken from him by Warrant from four Justices of the County, &c. at General Sessions, &c. and kept where they think fit, and shewed at every Muster.

Refusing to deliver them, forfeits them to the King, and by Warrant from one Justice, &c. may be committed for three Months. 7 *Fac. cap. 6.*

No Papist, or reputed Papist, refusing or making Default to subscribe the Declaration, (which see in *Advowson*) shall keep any Arms, Weapons, Gunpowder or Ammunition, other than such which shall be allowed him by Order of Sessions, for the Defence of his House and Person.

Two Justices, &c. may by Warrant give Power to Persons in the Day-time to search for Arms, with the Assistance of the Constable, &c. in the Possession of any Papist, or so reputed, and seize them to the Use of the King, and must deliver them the next Quarter-Sessions in open Court.

Papist, &c. not discovering his Arms to some Justice of the Peace, within ten Days after Refusal, or making Default to subscribe the Declaration, or hindring Persons authorized to search, shall be committed by Warrant from two Justices, &c. for three Months without Bail, and shall forfeit the Arms, and pay treble the Value to the Use of the King, to be appointed by Justices at the next Quarter-Sessions.

Persons concealing them, or hindring the Search, may be committed (*ut prius*) and forfeit treble the Value.

Persons discovering Arms, &c. so as they may be seized, Justices at Sessions shall allow the full Value of the Arms being there delivered, to be assessed by Justices in Sessions, and be levied by Distress and Sale of Goods of the Offender. 1 *Will. & Mar. cap. 26.*

Baptism——See Children of Recusants.

Bringing them over, or offering them to any Person to be used, both he and the Receiver incur a *Premunire*. Beads.

But if the Person to whom offered apprehends the Offender, and brings him before a Justice of Peace, or acquaints him with his Name within three Days after the Offence, or delivers the Beads the next Day after Receipt to a Justice of Peace, shall not incur the Penalty of 13 *Eliz. cap. 2.*

Selling, printing or importing any superstitious Books, forfeits 40 s. per Book, between the King, Prosecutor and Poor, &c. 3 *Fac. cap. 5.* Books.

Two Justices, &c. may search Houses, &c. for such Books and Relicks, and burn them; but such which are of Value must be defaced in open Sessions, and returned. 7 *Fat. cap. 6.*

Breviaries——See Books.

Of Absolution, to obtain such from Rome is High Treason, or to comfort or maintain those who obtain them, is a *Premunire*, that is, the Aider of such Offender. Bulle. 13 Eliz. c. 2.

After the Fact, to the Intent to set forth, uphold or allow the Do-Dyer 165. ing or Executing the usurped Power of Rome.

About seven Years after the Making this Statute, a Man was indicted for aiding another, knowing him to be a Maintainer of the Jurisdiction of the See of Rome, *contra formam Stat' præd'* but

but notwithstanding this *Conclusion*, the *Indictment* was quashed, because it did not set forth, That he aided the Person to the *Intent* to set forth, uphold or allow that Authority.

Burials.

Every Popish Recusant must be buried in Church, or Church-yard, according to the Ecclesiastical Laws, or his Executor, or Administrator forfeits 20 l. 3 *Fac. cap. 5.*

Catechisms, — See Books, the like Penalty.

Children of Recusants. { Must within a Month after their Birth be baptized by a lawful Minister, or the Parent forfeits 100 l. if he outlive a Month; if not, then his Wife to pay the Forfeiture, to be divided between King, Prosecutor and Poor. 3 *Fac. cap. 5.*

But Protestant Children of Popish Recusants, not allowing them a fitting Maintenance, suitable to the Ability of such Parents, shall have such Allowance as the Lord Keeper, &c. shall order. 11 & 12 *Will.*

Conforming before Judgment, except in Cases of Treason and Misprision, shall be discharged of Penalties. 21 *Eliz. cap. 1.*

The Son and Heir being no Recusant, or conforming and taking the Oath of Supremacy, his Lands are discharged from the Penalty incurred by his Ancestor. 1 *Fac. cap. 4.*

Conforming. { But not conforming after Sixteen, his Lands are not discharged till he conform.

Conforming after Conviction, must be within a Year afterwards, and so every Year receive the Sacrament, or forfeits 20 l. in the first Year, 40 l. the second Year, and 60 l. for every Default afterwards; and if once he hath received, and afterwards makes Default, he forfeits 60 l. between the King and Prosecutor. 3 *Fac. cap. 4. Cro. Fac. 365.*

Court. { Recusant convict coming to Court without the King's Leave, forfeits 100 l. between the King and Prosecutor, and must not come within Ten Miles of London. 3 *Fac. cap. 5.*

Crosses. — See Beads.

Declaration. { Two Justices may tender the Declaration, mentioned in the Act of 30 *Car. 2.* to any Papist, and if he doth not make and subscribe it, or shall refuse to appear upon Notice, (which see in *Abbotson*) shall be liable to Penalties in the Act of 1 *Will. & Mar. cap. 5.*

Excommu-
nicated.

Popish Recusant shall be reputed duly excom-
municated; and if he sue any Person, the
Defendant may plead it in Disability, but he
must aver the Plaintiff to be *Papalis Recusans*.
3 *Lev.* 11.

Executor.

Popish Recusant shall not be Executor or Admi-
nistrator, or Guardian, but the next of Kin
to whom the Land cannot descend, shall
have the Guardianship. 3 *Fac. cap.* 5.

Feme Covert

Husband is not chargeable with the Forfeiture
of the Wife for not receiving the Sacrament,
as enjoined by 3 *Fac. cap.* 4. nor the Wife af-
ter his Death. 3 *Fac. cap.* 4.

Being a Popish Recusant convict, and her Hus-
band none, she not conforming by the Space
of one whole Year before his Death, forfeits
two Thirds of her Jointure or Dower, and
shall not be Administratrix or Executrix to
her Husband, and shall be taken as a Person
excommunicated. 3 *Fac. cap.* 5.

Not conforming within three Months after Con-
viction, may be committed by two Justices till
she conform, unless her Husband will pay to
the King 10 *s.* per Month, or a third Part of
his Lands. 7 *Fac. cap.* 6.

She shall not abjure the Kingdom. 33 *Eliz. c.* 2.

Guardian.

—See Executor.

Jesuits.

—See Priests.

Indictment.

Indictment against Jesuit, Priest, or other Ec-
clesiastical Person; is good, though he is not
in the Kingdom; which Indictment being
found, and he not returning, after Proclama-
tion, &c. it is as good as if a Verdict had
passed against him. 27 *El. cap.* 2.

Jurisdiction
Ecclesiasti-
cal.

Jurisdiction Ecclesiastical is annexed to the
Crown, and he who maintains the Power of
any Foreign Prelate, &c. forfeits his Goods
and Chattels, and if not worth 20 *l.* at the
Time of his Conviction, shall be committed
for a Year without Bail.

Second Offence is a *Premunire*.

Third Offence is High Treason. 1 *El. cap.* 2.

The two first of these Offences are inquirable
by Justices in Sessions within a Year and a
Day after they are committed. 5 *El. cap.* 1.

Jurisdiction Ecclesiastical. } Maintaining the Jurisdiction of *Rome*, is a *Praemunire*. Justices in Sessions may hear and determine it. 5 *El. cap. 1.*

Dyer 281.b. For the first Offence, there is a Forfeiture of Goods and Chattels; and six Years after the Making this Statute, one of the Queen's Subjects knowing it was written in Books beyond Sea, against her Supremacy, and affirming the Jurisdiction of the See of *Rome*, imported and sold them here to some Persons, who likewise had heard what was contained in them; the Importer was guilty within the Statute, but not the Buyer; but if a Man buyeth such Books, and reads them, and in Dispute maintains the Books to be good, this is an Affirming the Jurisdiction, &c.

Justice of Peace. } Must acquaint a Privy Counsellor within fourteen Days after he shall have Notice of the Offenders bringing hither Crosses, Beads, &c. or offering them to be used, or incurs a *Praemunire*. 13 *Eliz. cap. 2.*
 } Not acquainting a Privy Counsellor within Twenty-eights Days after a Jesuit or Priest, &c. shall be discovered to him, forfeits 200 Marks. 27 *Eliz. cap. 2.*

Ladies Psalters. Legends. Manuals. } See Books.

Marriage. } Popish Recusant convicted of marrying otherwise than according to the Form of the Church of *England*, shall not be Tenant by the Courtesy; and if there is no Land of which he can be Tenant, &c. shall forfeit 100 *l.* to the King and Prosecutor; if a Woman, she shall not have her Dower or Jointure, or Widow's Estate. 3 *Jac. cap. 2.*

* See Indictment for this Offence.

Dyer 203.a. Mass.

231. b. Three Indictments against a Man for hearing three

Masses on several Days, he shall pay but 100 Marks, and not so many for every Offence. **Dyer 281.**

* Saying Mass, forfeits 200 Marks; hearing it 100 Marks, and may be committed for a Year, not to be enlarged till the Fine is paid; one Third of the Forfeiture is to the King, another to the Prosecutor, the other to the Poor, &c.

Prosecution may be before Justices in Sessions, but it must be within a Year and a Day after the Offence. 25 *Eliz. cap. 1.*

Discovering

Mass.

Discovering a Priest, or Persons at Mass, within three Days after Notice of the Offence, so as any be taken and convicted or attainted, shall have the third Part of the Forfeiture. 3 *Fac. cap. 5.*

Missals.

Primers.

See Books.

Pardon.

The King pardoned the Conviction; the Question was, Whether the Person pardon'd should be disabled to present so long as he remained a Recusant; because the Statute of 3 *Fac. cap. 5.* is, That every Popish Recusant *convict* shall be disabled during the Time he remains a Recusant, but doth not say *convict*; but it was adjudged, That the Word *convict* should go thro' the whole Sentence. 3 *Lev. 333.*

Jesuits, Seminary Priests, &c. and other Ecclesiastical Persons, born within the King's Dominions, and made such by the Bishop of Rome, coming in, or remaining in the said Dominions, are guilty of Treason, and the Receivers, Aiders and Maintainer of them, knowing them to be such, are Felons. 27 *Eliz. cap. 2.*

Any knowing a Priest or Jesuit to be here, and not within twelve Days afterwards discovering him to a Justice of Peace, shall be committed and fined. 27 *Eliz. cap. 2.*

Priest.

A Jesuit must make such Submission as is mentioned in the Act of 35 *Eliz. cap. 2.* and if he refuse to answer, shall be committed till he complieth: But making Confession (as in the Act) shall be discharged; but relapsing afterwards, takes no Benefit of that Law. 35 *Eliz. cap. 2.*

The Person who within three Days after Notice of the Offence, shall discover to a Justice of Peace a Recusant, or him who doth entertain a Popish Priest, Jesuit, &c. shall be pardoned, and shall have a third Part of the Forfeiture; so that the Whole forfeited doth not exceed 150*l.* and if above that Sum, then shall have 50*l.* which, after Conviction of the Offender, by a Certificate from the Court where he was tried, directed to the Sheriff or other Officer, shall be paid out of the Money levied.

Recusancy.

Presentation
See Pardon.

Shall not present to a Benefice, or grant the next Avoidance, but the Chancellors of Oxford and Cambridge shall have it; but they must not present one already beneficed. See Advowson 1 W. & M. 26.

Portals.

—See Books.

Reconciled.
See Absolved.

And per Stat. 3 Jac. cap. 4. to move any one to promise Obedience to the See of Rome, or other Prince, is High Treason in the Mover, and him that promisseth Obedience.

Recusant
Convict.

Must not remove five Miles from his Abode, (Vide Abode.)

Must not come to Court, (Vide Court.)

Must not practise the Art of	{	Apothecary,	{	Or be an Officer in
		Civil Law,		any Court, or a-
		Common		mongst Soldiers,
		Law,		or in a Castle,
		Physick.		Fortress or Ship.

The Penalty is 100 l. to be divided between the King and Prosecutor. 3 Jac. cap. 5.

Rosaries.

—See Books.

Sacrament.

—See Conforming.

Seminaries,
and sending
beyond Sea.

Sending Relief to any brought up in the Seminaries, are guilty of a *Premunire*.

Those who are brought up there not in Orders, and not returning within six Months after Proclamation made for that Purpose, and submitting themselves to the King within two Days after their Return, either before the Bishop of the Diocese, &c. or two Justices, &c. and taking the Oath of Supremacy, &c. are Traitors. 27 El. cap. 4.

Sending Persons beyond Sea to be instructed in the Popish Religion, forfeits 100 l. and the Persons sent are made incapable to take any Grant of Inheritance either to themselves or to any in Trust for them. * The Forfeiture is to be divided between the King and Prosecutor. 1 Jac. cap. 4.

* But per
11 & 12 W.
the Forfeiture is to

the Discoverer, and the Person convicting.

Children shall not be sent beyond Sea without Licence from the King, or six of his Privy Council, whereof the Principal Secretary of State to be one ; and the Person sent is made incapable of enjoying his Lands by Descent or Grant, until (being of the Age of 18 Years) he take the Oath of Allegiance before some Justice of the Peace of the County where his Parents do or did dwell ; and in the mean Time his next of Kin (not being Popish Recusants) shall have his Lands and Goods.

He that goes out of the Kingdom forfeits 100 *l.* between the King, Prosecutor and Poor. 3 *Fac. cap. 5.*

He who enjoys the Lands of such a Child, &c. shall be accountable to him when he conforms. 3 *Fac. cap. 5.*

Going beyond Sea, or being sent thither to be brought up in the Popish Religion, and being convicted thereof, shall be disabled to sue, or to be Executor or Administrator, or capable of a Legacy or Gift, or to bear any Office, and forfeits all his Goods and Chattels, and also his Lands and Offices during his Life.

But conforming within six Weeks after his Return, shall not be punished. 3 *Car. 1. cap. 2.*

Notwithstanding all these Laws, the Parliament was of Opinion that Popery encreased ; and therefore to prevent its Growth, a Law was made, That if any Person should take one or more *Popish Bishop, Jesuit or Priest*, and prosecute him till he is convicted of saying Mass, or of exercising any other Part of the Office or Function of a *Popish Bishop or Priest*, then such Person shall have a *Certificate* under the Hand of the Judge or Justices before whom the Party is convicted, certifying such Conviction, and that he was taken by the Party, &c.

This Certificate must be carried to the Sheriff of the County within four Months after the Conviction, and after a Demand made, the Sheriff may pay the Taker 100 *l.* and if any Dispute happens about the Right to his Reward, the Judge, &c. who certifies, &c. shall by such Certificate direct how it shall be shared.

If the Sheriff die, or is removed before the End of four Months, the succeeding Sheriff shall pay it within two Months after Demand, or Certificate produced.

Sheriff not paying, forfeits 200 *l.* to be recovered by the Party, his Executors or Administrators, in any Court of Record ; but if he pay it, then upon producing the Certificate or a Duplicate, the Lord Treasurer shall pay it out of the Revenue of the Crown.

If any *Popish Bishop, Priest or Jesuit*, shall be convicted of saying Mass, &c. or any Papist shall keep School, &c. and be convicted, &c. he shall be adjudged to perpetual Imprisonment, in such Place where the King, by Advice of his Council, shall think fit.

Recusancy.

A Person educated in that Religion, and not taking the Oaths of Allegiance, &c. made *Anno 30 Car. 2.* within six Months after eighteen Years of Age, he shall be incapable (as to himself only) to inherit or take Lands by Devise, Descent, or Limitation; and that during his Life, or until he shall take the Oaths, the next of Kin, who shall be a Protestant, shall enjoy the Lands, and not be accountable for the Profits, but for Waste only.

* This
Clause is
confirmed
by 3 Geo.
c. 12.

* Every Priest after the 10th of *April 1700*, is made incapable of purchasing Lands, &c. either in his own Name, or in the Name of any Person to his Use, or in Trust for him.

And that after the said 10th of *April*, all Estates, Terms, and other Interests or Profits whatsoever out of Lands, to or for the Use of, or in Trust for such Person, shall be void.

But foreign Priests, not Natives nor naturalized, officiating in Dwelling-houses of foreign Ministers, are exempted, so as they enter their Names in the Office of the Principal Secretary, and the Place of their Birth, and to whom they belong.

12 A.C. 14. Every Papist, or Child not being a Protestant, under the Age of Twenty-one Years, being the Child of a Papist; and every Mortgagee, Trustee, &c. for any such Papist or Child, shall be incapable to *present* to any *Benefice* or *Prebend*; and every such Presentation shall be void, and the Universities shall in such Case present as in the Act. 3 *Jac.* 1. is directed.

As often as a Presentation shall be brought to the Ordinary from any Person reputed to be, or whom the Bishop shall suspect to be a Papist, or Trustee for any one of that Religion, he may tender to the Patron (if present) the Declaration 25 *Car. 2.* against *Transubstantiation*; and (if absent) he may by Notice in Writing, to be left at his Habitation, appoint a Time and Place for his Appearance before him, or before some other Person commissioned by him, and then tender the Declaration to the said Patron; and if he shall refuse it, or not appear, the Presentation shall be void; and then the Bishop shall within ten Days give a Certificate to the Vice-Chancellor of that University to whom the Presentation belongs, and for that Turn only 'tis vested in them.

The Bishop may examine the Presentee on Oath, before he give him Institution, whether to his Knowledge or Belief, the Person who made the Presentation be his real Patron, and made it in his own Right, or whether he is not Trustee for a Papist; and if he refuse to be examined, or do not answer directly, such Presentation shall be void.

See the Act at large.

1 G. c. 55. A Papist having an Estate in Lands, &c. or one educated in the Popish Religion, or whose Parents shall be Papists, and he of full Age, and not taking the Oaths, by an Act of 1 G. and re-

repeating and subscribing the Declaration by an Act 30 Car. 2. in some of the Courts at *Westminster*, or at the Quarter-Sessions of the County where his Lands lie, between the Hours of nine and twelve in the Forenoon; or in Default thereof, he, or his Trustee, not entring his Name and Lands in a Parchment Roll, and in what Parish they lie, and who are the Possessors thereof, and what Estate he hath in the same; and if let, then at what yearly Rent reserved; and if leased, then by whom such Lease was made, and what yearly Rent reserved, and what Fine or Money was paid for such Lease; and all this within six Months after he or his Trustee shall be in the actual Possession of the Profits, and the Time and Day of the Month and Year when such Entry shall be made; and not subscribing such Registry, either by himself, in the Presence of two Justices in open Sessions, or by some other Person authorized by Warrant of Attorney, under his Hand and Seal, attested by two Witnesses, who must prove the Execution thereof on Oath at the Quarter-Sessions, and two Justices then present, shall subscribe their Names as Witnesses to such Entry, shall forfeit as followeth:

§. The *Fee-Simple* of his Lands not registred, or fraudently registred, and the full Value of the *Inheritance* of the Lands whereof he hath not the *Fee-Simple*, two Thirds to the Crown, the other to any Protestant who will sue for it in any Court of Record at *Westminster*, for which he may bring an Ejectment upon his own Demise; and if he prove the Lands to belong to a Papist, and he cannot prove that he took the Oaths, or that the Lands were registred, the Plaintiff shall have a Verdict, or he may exhibit a Bill in Chancery, to discover a Title, Incumbrances and Trusts, to which Bill the Defendant shall answer, and not plead or demur.

Persons beyond Sea, on the 18th of *June* 1716, and registering and subscribing, &c. on or before the 20th of *May* 1717, or at any other Time within *six Months* after, the same shall be effectual.

But if any Person after such Default or Fraud in registering, and before Conviction or Ejectment, or Suit brought for such forfeited Lands, shall for a valuable Consideration really convey, lease or mortgage them, the Purchaser, Lessee or Mortgagee, shall not be prejudiced, especially not knowing the Seller to be a Person within the Description of the Act; but such Seller shall forfeit the Value of the *Inheritance*, to be distributed and recovered as aforesaid.

Farmer and Tenants at a Rack-Rent, or upon Lease, whereon two Thirds of the full yearly Value, or more, is reserved, shall not be compelled to register, &c. and no Creditor who hath any Charge upon the Estate shall be prejudiced; but then the Person making Default, or committing any Fraud in regi-

string, shall forfeit the Value of such Charge ; one third Part to the Prosecutor, the other two Thirds to the Crown.

Persons in the *East* or *West Indies*, or *America*, shall have *twelve Months* longer than *six Months* before-mentioned.

The *Clerk of the Peace* shall keep a Parchment Book, in which he shall register the *Christian and Surnames* of all those who shall come in Person to be registred, and of those who shall send any Writing under his or her Hand, desiring him to register the same, and their Estates, in such Words as they shall send in any Writing signed as aforesaid, paying 3*d.* for every 200 Words, and delivering such Writing to him ten Days at least before the next Quarter-Sessions, which Names and Estates the Clerk of the Peace, or his Deputy, shall enter in such Parchment Book before the next Quarter-Sessions after such Delivery, to which Sessions he shall bring the said Parchment Book, and he shall keep Alphabetical Tables of the Surnames of those whose Names and Estates shall be registred, and of the Parishes where their Lands lie, which Tables must refer to the Place in the Parchment Book where their Names and Lands shall be registred, and he must file the Warrants of Attorney, and enter them on Record, and shall have 3*d.* for entering 200 Words, and 4*d.* for a Search, and shall, if desir'd, give Copies of such Registries subscribed by himself, or Deputy, taking 3*d.* for every 200 Words of such Copy ; the Clerk of the Peace neglecting or refusing, &c. and being thereof convicted, forfeits his Office.

3 G. c. 18. The Time of registering Estates is enlarged to the 20th of October 1717.

No Action shall be brought for any Penalty or Forfeiture for neglecting, or fraudulently registering, *after two Years*, after the Offence committed.

And that if the Manors, Lands and Farms, to be registred, lie in two Counties or more, the registering shall be only in that County where the Manor-house, or Farm-house is, taking Notice that the same doth extend to another County.

And because some Doubts have arisen upon the Act 11 & 12 W. concerning the Sale of real Estates of Papists, incurring the Disabilities in the said Act ; therefore it was enacted by the
3 G. c. 18. Statute 3 Georgii, That no Sale of Lands for a valuable Consideration shall be impeached, which shall be made to a Protestant Purchaser by any Person in the Possession thereof, upon Pretence of any Disability incurred by the Person joining in such Sale, or by any Person from whom the Title is derived, unless before such Sale, the Person who is to take Advantage of such Disability shall have recovered the Lands, or have given Notice of his Claim to the Purchaser, or shall have entred his Claim in open Court, in the Quarter-Sessions of that County where the Lands lie, and hath *bona fide* pursued

sued his Remedy in a proper Court of Justice to recover the same.

No Lands shall pass from any Papist, either by Deed or Will, unless the Deed shall within six Months after its Date, and the Will within six Months after the Death of the Testator, be inrolled in some Court at *Westminster*, or else by the *Custos Rotulorum* of the County where the Lands lie, and two Justices, and the Clerk of the Peace, or two of them at least, whereof the Clerk of the Peace to be one.

Indictment for asserting the Jurisdiction of the Pope.

Middl' ff. **J**UR', &c. quod J. O. nuper de, &c. in Comit' predict' Clericus 8 die Septembris, Anno Regni, &c. apud H. in Com' pred' scienter & malitiose in presentia diversorum dict' Domini Regis subitozum affirmavit & defendit auctoritatem spirituales Pape adtunc existens Principis sive Persone extranee & preantea in hoc Regno Angliæ usurpatam in his Anglicanis verbis sequen' (There recite the Words) * ea intentione extollere Auctoritatem Pape predict' in magnam derogationem Auctoritatis & Pzerogative dict' Dom' Reg' & contra Coronam & Dignitat' suas, necnon contra formam Statuti in hujusmodi casu edit' & probis. & quod T. P. de, &c. sciens prefat' J. O. verba predict' locutum fuisse ac dictam Auctoritatem Pape predict' modo & forma pred' extollere & defendisse prefat' J. O. apud H. pred' postea scil' nono die Septembris, Anno supradicto consolatus est & commorabitur ex proposito & ea intentione ut idem J. O. promoveret usurpatam Auctoritatem Pape pred' in perniciosum exemplum aliorum, ac contra Coronam & Dignitatem dict' Dom' Regis, necnon contra formam Statut' in hujusmodi casu edit' & probis. &c.

1 Eliz. c. 1.
5 Eliz. 1.
Prosecuti.
on must be
within a
Year after
the Offence
Dyer 281.
363.
Judgment
first Of-
fence, per
1 Eliz. c. 1.
Forfeiture
of Goods
and Char.
rels, &c.
per 5 Eliz.
cap. 1. it is
a Præsum-
ption.

For persuading and endeavouring to withdraw one from Obedience.

Suffex, ff. **J**UR', &c. quod W. B. de L. in Com' predict' Gen' nono die Septembris, Anno Regni, &c. apud L. pred' in Com' predict' voluntarie & proz ditione conatus est & praticabit absolvere, persuadere & seducere quendam T. P. de L. predict' in Com' predict' subditum dicti Domini Regis a naturali obedientia quam idem T. P. erga dictum Dominum Regem gerere debet ad obedientiam pretese Auctoritatis sedis Romane dicen' eidem T. P. hec Anglicana verba sequen' viz. (Here recite the Words) contra pacem dicti Domini Regis Coronam & Dignitatem suas, & contra formam Statuti in hujusmodi casu edit' & probis. &c.

Against

Against a Jesuit and his Receiver.

27 Eliz. c. 2. Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pred' Clericus, natus apud H. pred' in Com' pred' & infra unum Annum jam ult' elapsum factus & institutus Jesuita per pzetensam Authozitatem a sede Romana deribatam p'oditozie apud H. pred' in Com' pred' nono die Septembris & diversis aliis diebus tunc p'orime sequen' & mortuus est, & remanebat contra formam Statuti in hujusmodi casu edit' & p'obis. ac contra pacem dict' Dom' Regis Coronam & Dignitat' suas, & quod R. L. de H. pred' in Com' pred' Gen' scienter voluntarie & felonice postea scilicet dicto nono die Septembris Anno supradicto p'efat' J. O. apud H. pred' in Com' pred' recepit relebavit & comf'ortavit dicto J. O. ad tunc & ibidem ad largum & e'pza p'isonam existen' ac p'efat' R. L. hujusmodi Jesuitam esse tunc & ibidem sciente & agnoscente contra formam Statut' pred' & contra Pacem dicti Dom' Reg' Coronam & Dignitatem suas.

† A Priest going to Ireland, was driven on Shore in England by Strefs of Weather, and immediately taken; and being indicted on this statute, was acquitted, because, properly speaking, he neither came or was sent hither, Raym. 377. Judgment. High Treason in the Jesuit, Felony in the Receiver.

For saying and hearing Mass.

23 Eliz. c. 1. Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pred' Clericus, nono die Septembris, Anno Regni, &c. apud H. pred' in Com' pred' voluntarie dixit & celebravit Missam contra formam Statuti in hujusmodi casu edit' & p'obis. & contra pacem dict' Dom' Regis Coron' & Dignitat' suas, & quod R. N. de L. in Com' pred' Gen' dicto nono die Septembris Anno supradicto apud H. pred' in Com' pred' voluntarie p'efens fuit tempore celebrationis & dictionis Masse predict' ac eandem Missam sic ut p'efertur dictam & celebratam ad tunc & ibidem voluntarie audivit contra formam Statut' predict' & contra pacem, &c.

Judgment for saying Mass 200 Marks; for hearing it 100 Marks.

Against one withdrawn from his Allegiance, &c.

1 Jac. c. 4. Berks' ff. **J**UR', &c. quod W. P. nuper de N. in Com' pred' Gen' natus apud C. in Com' pred' Deum p' oculis non habens, sed instigatione Diaboli seductus nono die Augusti, Anno Regni, &c. debitam ligentiam suam ergo dictum Dominum Regem minime ponderans apud N. pred' in Com' pred' a naturali obedientia sua quam erga dictum Dominum Regem gerere debuit voluntarie & p'oditozie absolut' reconciliat' & seductus fuit (Anglice withdrawn)

drawn) contra debitam ligeantiam suam & in contemptum dict' Dom' Reg' & legum suarum, & contra Pacem dict' Dom' Reg' Coronam & Dignitatem suas, necnon contra formam Statuti, &c. Judgment High Treason.

For wearing an *Agnus Dei*.

Suffex, ff. **J**UR', &c. quod T. G. nuper de E. in Com' pzed' 13 Eliz. c. 2. Gen' existen' subditus Domini Georgii nunc Regis, &c. nono die Septembris, Anno Regni dict' Dom' Reg' nunc quarto apud F. pzed' in Com' pzed' habuit & recepit de quodam A. B. nuper de C. in Com' pzed' Gen' quandam rem vocat' Agnus Dei, quam pzed' A. B. a partibus transmarinis infra hoc Regnum Angliæ protulit sciens eandem rem vocat' Agnus Dei, fore sanctificat' sive consecrat' per Papam sive Episcopum Romanum in propria persona sua & quod idem T. G. pzed' rem vocat' Agnus Dei, postea scilicet eodem nono die Septembris Anno supradicto & diversis aliis diebus & vicibus apud F. pzed' in Com' pzed' & diversis aliis locis superstitiose & contra ligeantiam suam gerebat & utebatur contra formam Statut' &c. Judgment Praemunire

Against a Recusant for not causing his Child to be baptized at the Church.

Suffex, ff. **J**UR', &c. quod T. K. nuper de S. in Com' pzed' 3 Jac. c. 5. Ar' nono die Septembris, Anno Regni, &c. existen' Papalis Recusans (Anglice, a Popish Recusant) prolem masculam infra Parochiam de S. pzed' eodem nono die Septembris natam habuit & quod pzed' T. K. eandem prolem masculam infra unum mensem proxime post natiuitatem ejusdem non causabit baptizat' fore per legitimum Sacerdotem (Anglice, a lawful Minister) in aperta Ecclesia Parochie pzed' neque in aliqua alia Ecclesia adjacen' sive Capella ubi Baptisma communiter administratur secundum leges Regni Angliæ pzed' prole mascula nullam habet infirmitatem ratione cuius ad locos pzed' asferri non potuit (Anglice, could not be brought) contra formam Statut' in huiusmodi casu edit' & prohib. & contra Pacem dict' Dom' Reg' Coron' & Dignitatem suas. Judgment Forfeits 100 l.

Release, See Recognizance.

Rescous.

Rescous.

THIS is a Resistance against a lawful Authority, and by Violence taking away a Prisoner, or procuring his Escape.

If the Person rescued hath committed *Felony*, and was arrested for it, then rescuing him is *Felony*; but if he was not arrested, then the Opposing or Hindring any Person to apprehend him is a *Misdemeanour* but not *Felony*.

Sid. 352.

But if the Rescuor shall not be arraigned of the *Felony* till the Principal is attainted; and if he die before Attainder, the *Felony* is discharged; but he shall be indicted, fined and committed for rescuing him. *Hale Pl. Coron. 116.*

Dyer 352.
B.

Indictment for a Rescous was *quod arrestavit*) without saying, *& in custodia sua habuit*, and for this Reason it was quashed; tho' in the same Indictment it was alledged, 'That the Defendant rescued him out of the Possession of the Bailiff.

The Indictment was, That *Fisher on such a Day and Year, &c.* at *H.* feloniously cut a Purse, and took 40 s. and that he was arrested for the said *Felony* at *H.* aforesaid, and that the Bailiff had him then and there in his *Custody* until one *Fox* assaulted him, and then and there took him out of his *Custody*, &c. the Question was, whether the Time of the Arrest and Rescous were certain by this Indictment; that is, Whether the Words *then and there* shall refer to the Arrest? Or whether the Sentences were distinct? There were different Opinions in the Case, so it was not adjudged. But I can see no Reason why these should not be taken to be distinct Sentences, and that the Words *then and there* in the first Sentence should relate to the Arrest, and in the other to the Rescous.

An Indictment more incertain than the former was held good; as where *vi & armis* was omitted, and not supplied by *manu forti*, and the Place where the Rescous was made was likewise left out; yet it was held, That it must be intended to be in the Place where the Arrest was, and that the Word *rescussit* implies it was done with Force. 'Tis true, there is a Case where the Omission of the Words *vi & armis* made the Indictment ill; but then it doth not appear by the Book that the Word *rescussit* was in.

1 Bulst. 205.

An Indictment for a Rescous from a Sheriff's Bailiff.

Suffex, ff. **J**ur' &c. quod cum W. E. Ar' Vic. Com' S. p'p' virtute h'ebis Dom' Reg' sibi direct' fecit Warrantum sive p'ceptum suum in scriptis apud H. p'ed' in Com' p'ed' geren' dat' duodecimo die Septembris Anno Regni, &c. & cuidam R. T. ballibo suo direct' ad capiend' quendam H. B. de H. in Com' p'ed' Gen' ff, &c. ad respondend' dicto Domino Regi, de diversis transgr' & contemptibus per ipsum perpetrat' ad sectam S. B. in Cancellaria dicti Domini Regis apud Westm. p'out h'ebe illud in se exigebat virtute cuius quidem Warranti p'p' R. T. postea scil' undecimo die Septembris, Anno Regni, &c. supradicto apud L. in Com' p'ed' cepit & arrestabit p'p' H. B. & ipsum sic in custodia ipsius R. T. adtunc & ibidem erissen' quidam J. O. de L. p'ed' in Com' p'p' Yeoman postea scil' dicto undecimo die Septembris, Anno supradict' vi & armis, &c. apud L. p'p' in Com' p'ed' in & super p'fat' R. T. insultum fecit & ipsum R. T. adtunc & ibidem verberabit, vulnerabit & maletractabit & p'p' H. B. a custodia dicti R. T. adtunc & ibidem vi & armis rescussit in malum exemplum aliorum in hujusmodi casu delinquen' ac contra pacem dict' Dom' Reg' nunc Cozonam & Dignitatem suas.

For rescuing of a Felon from a Constable.

Suffex, ff. **J**ur' &c. quod cum quidam H. P. de L. in Com' p'ed' Ar' undecimo die Septembris, erissen' un' Justiciar' dict' Dom' Reg' Com' in Suffex, ad pacem in eodem Com' conserband' necnon ad diversas felonias transgr' & alia malefacta in eodem Com' perpetrat' audiend' & terminand' assign' p'ed' undecimo die Septembris, Anno supradicto apud L. in Com' p'ed' quoddam Warrantum sive P'ceptum in scriptis fecit & cuidam J. O. de H. in Com' p'ed' Yeoman, adtunc Constabular' de Parochia de H. p'ed' in Com' p'ed' direxit & deliberabit per quod quidem Warrant' p'fat' J. O. sic ut p'fertur Constabular' erissen' p'ceptum fuit quod caperet Corpus cuiusdam H. B. de H. in Com' p'ed' Gen' & p'fat' H. B. cozan p'ed' H. P. vel uno alio Justiciar' pacis p'zo Com' p'ed' duceret & haberet ad examinand' p'fat' H. B. pro feloniam captionem vigint' obium de Bonis & Catallis cuiusdam R. C. qui quidam J. O. Constabular' p'ed' postea scil' p'ed' undecimo die Septembris, Anno supradicto apud H. p'ed' in Com' p'ed' virtute Warranti p'ed' eundem H. B. cepit & arrestabit & ex causa p'ed' adtunc & ibidem in custodia

Restitution of stoln Goods.

stodia ipsius J. O. habuit. Et quod quidam F. C. de H. pzed' in Com' pzed' Gen' satis sciens pzed' H. B. per J. O. Constabular' pzed' sic ut pzed' fore arrestat' & in custodia sua esse postea scil' pzed' undecimo die Septembris, Anno supradicto apud H. pzed' in Com' pzed' vi & armis adtunc & ibidem eundem H. B. a custodia pzed' J. O. felonice cepit & rescussit & ad largum quo voluit ire permisit in magnum dict' Dom' Reg' contemptum & in malum exemplum aliozum in huiusmodi casu delinquen' necnon contra pacem dict' Dom' Reg' corzon' & dignitat' suas.

For rescuing one put in the Stocks upon Suspicion of Felony.

Kanc. ff. **J**UR', &c. quod 21 die Septembris, Anno Regni, &c. quidam J. O. de H. in Com' K. pzed' Yeoman, apud L. in Com' pzed' captus & arrestatus fuit per T. P. de H. pzed' pro suspicione cufusdam felonie, viz. pro furatione unius equi ipsius T. P. & quod idem J. O. immediate postea traditus fuit per pzedat' T. P. cuidam W. V. tunc Constabular' Hundredi de S. in quo sita est villa de H. qui quidem Constabularius postea scilt' dicto undecimo die Septembris, Anno supradicto apud H. pzed' in Com' pzed' pzedat' J. O. in Cippis posuit ad eum salvo ibidem custodiend' donec idem Constabularius parare posset auxilium ad ducend' pzedat' J. O. coram aliquo Justiciar' pacis dict' Dom' Reg' pro Com' pzed' eraminand' ac quod postea scilt' pzed' undecimo die Septembris, Anno supradicto quidam J. S. & H. pzedict' faber ferrarius vi & armis, Cippos pzed' apud H. pzed' fregit & eundem J. O. tum & ibidem in Cippis pzed' existentem ex causa pzed' felonice cepit, eripuit & rescussit & ad largum quo voluit ire permisit contra pacem, &c.

Restitution of stoln Goods.

AT the Common Law, the Owner of Goods stoln could not have Restitution upon an Indictment against the Felon, tho' he was freshly pursued, because the Prosecution was at the Suit of the King; it was otherwise upon an Appeal, because that was at his own Suit.

Noy 128.

But this may be remedied by the Statute of 21 H. 8. c. 11. for if the Felon be found guilty, or attainted at the Prosecution of the Party robbed, or Owner of the Goods, the Justices have Power to award Restitution of the Goods stoln.

A Man

A Man stole Cattle and sold them in *open Market*, the Sheriff Noy 128. seized the Thief and the *Money*, and he was convicted and hanged at the Prosecution of the Owner of the Cattle, and he had Restitution of the *Money*; for tho' the Statute gives Power to the Justice to award Restitution, &c. of the *Goods stoln*; and tho' the *Money* in this Case was not *stoln*; yet because it did arise by *stealing*, it shall be within the Equity, tho' not in the very Words of the Statute.

This my Lord Coke calls a *Beneficial Law*, because it giveth 3 Inst. 242x the Party robbed a more speedy Remedy than by Way of *Appeal*, which before this Statute he ought to bring, or he could have no Restitution: And because 'tis beneficial, therefore it hath been held to extend to the Executors or Administrators of the Party, tho' they are not mentioned in the Statute.

In some Cases there can be no Restitution; as if the Felon 1 And. 344 sells the Goods in a Market, &c. and is afterwards con- Moor 360. victed, the Property is altered by the Sale; or if he wave them and escapeth, and 'tis not known who he was, the Lord having seised, the Owner cannot have Restitution, because the Felon cannot be indicted or attainted; but if Plate is sold in a Scrivener's Shop, it shall be restored upon Conviction, &c. because such a Shop is not a proper Market for such Goods.

But notwithstanding the Cases abovementioned, the Practice hath been otherwise ever since 4 & 5 Car. 1. for if the Criminal is convicted at the Prosecution of the Party who lost the Goods, he shall have Restitution, though they were sold in a Market Overt; and if the Party who bought them, pleads it to a Writ of Restitution brought, the other upon a Demurrer to such a Plea will have Judgment.

This Resolution tends to the Advancement of Justice, to make Men vigilant in prosecuting Offenders, and it will discourage Persons from buying Goods for a small Value in a Market of such whom they have Reason to suspect. *Kelinge* 48. *Coke, Magna Charta* 714.

But if Goods are stoln, and not waived in Flight, or seised by a proper Officer, there the Party may take his Goods again, though he doth not prosecute; but if waived or seized, the Party shall have no Restitution till Conviction at his Prosecution, and even in such Case he shall have no more than what is mentioned in the Indictment, though other Goods were stoln at the same Time; and the Reason is, because by such Omission, the Offender might have escaped.

Riot.

THIS is where *three or more* meet, to do an unlawful Act with Force, and accordingly execute the same; for if they do not, it is only an unlawful Assembly.

But it can be no Riot, except there is a *precedent Intent* to do an unlawful Act, and that with Force.

1 G. c. 6. But now by the Act 1 Georgii, If twelve are unlawfully assembled, one Justice, Sheriff, &c. on Notice of such Assembly, shall come as near them as he can without Danger; and having commanded Silence, shall make this Proclamation, or the like in Effect:

ff. Our Sovereign Lord the King chargeth and commandeth all Persons being assembled, immediately to disperse themselves, and peaceably to depart to their Habitations, or lawful Business, upon the Pains contained in the Act, made in the first Year of King George, for preventing Tumults and riotous Assemblies.

God save the King.

If after Proclamation made, such Rioters do not disperse within an Hour, 'tis Felony without Benefit of Clergy; and if they are killed, he who kills them is indemnified.

Such Persons demolishing any *Meeting-house, Dwelling-house or Barn*, shall be Felons without Benefit of Clergy; and the City, Town or Hundred, where it was done, shall yield Damages to the Party injured; to be recovered against any two of the Inhabitants, in the Name of the Rector.

Persons opposing with Force, or hurting him who begins to make Proclamation, so that it cannot be made, shall be Felons without Benefit of Clergy; and twelve continuing together afterwards, shall be Felony without Benefit of Clergy.

Prosecution, &c. must be within twelve Months after the Offence.

What Persons meeting in Numbers shall not make a Riot.	Assembly.	{	Meeting together, and they know not for what.
	Bailiff,		—Requiring People to assist him, &c.
	Bear-baiting	{	Meeting at these Sports.
	Bowls,		
	Bull-baiting,		
	Cards.		—Meeting to play at Cards.
Constable.		—Assembling Persons to assist him, &c.	

Dancing,

- Dancing, Dice, Foot-ball. } Persons meeting at these Sports.
- Infants, } Meeting in Numbers, not incited by a Man of Discretion.
- Jury, —Falling out and fighting.
- May-day. } Meeting to dance, or to be merry on those Days.
- Midsummer. }
- Numbers. } Of Men meeting to carry away a Thing of a Burden, to which one claims a Right, though he hath none, so as they use no threatening Words.
- Sheriffs. —Assembling Persons to assist him.
- Sports. —Meeting to play at any Sport.
- Stage-play. } Causing a great Number to meet, 'tis a Riot, Roll 109.
- Servants. } No Riot in them if they go with their Master, who intends to commit a Riot, and they are ignorant of his Intentions.
- Threatened. } Threatened to be beaten in his House, if he get a Company to defend himself, otherwise if threaten'd to be beat going to Market.
- Women. —Meeting in Numbers.

Having Notice of a Riot, he must endeavour to remove it; ^{What one Justice may do.} he may bind the Rioters to the Good Behaviour; and if they have no Sureties, or refuse to be bound, he may commit them; and if the Justice neglects, he is to be fined; and the two next Justices to the Place, where the Riot was committed, forfeit 100 l. to the King, if they neglect (*Having Notice*) to suppress a Riot.

One Justice sitting in a judicial Place, and seeing a Riot, may record it upon his own View, which is not traversable, because he then acts as a Judge; but 'tis otherwise if he do not sit in such Place.

But when a Riot is over, he cannot meddle, but only proceed ^{What he cannot do.} against the Offenders as Trespassers against the Peace.

He cannot *fine* them, for this must be done by two Justices, by Vertue of the Statute of 13 H. 4. cap. 7.

They ought to send to the Sheriff or his Deputy, who by that Stat. seem to have a concurrent Jurisdiction with them in fining the Offenders; and therefore upon a Writ of Error brought, the Judgment was reversed where a Fine was set without the Sheriff. *Raym.* 386. ^{What the two Justices must do upon the Statute of 23 H. 4. c. 7.}

They must have Notice of the Riot, or else they are not punishable.
Dyer 210.

But yet 'tis the Opinion of Mr. Lambard, that they without the Sheriff (if they see a Riot) may commit the Rioters, take away their Weapons, and appraise them for the Use of the King, and justify the Beating and Killing, if opposed.

Adjudged that where Rioters are convicted upon View of two Justices, the Sheriff must be a Party to the Inquisition, and this is by Vertue of the Statute 13 & 14. but if they disperse themselves before Conviction, the Sheriff need not be Party; for in such Case the two Justices may make Inquisition without him, for this is *pro Domino Rege*; but if the Justices make no Inquisition within a Month after the Riot, they are punishable, but the Lapse of a Month doth not determine their Authority to make Inquisition, it only subjects them to a Penalty for not enquiring before.

2 Salk. 593. Indictment against the Defendants for that they *riotose, routose & illicite se assemblerunt, & sic assemblati insultum fecerunt, &c.*

Two were found guilty, and the Rest acquitted, but the Verdict was set aside because two could not be guilty of a Riot and by consequence all are acquitted.

2 Salk 595. Adjudged that where Four are indicted for a Riot, if it appear that they *assembled lawfully* without an ill Intent, and an *Affray* happened amongst them, none are guilty but those who are actually concerned in it, but if they were *unlawfully assembled*, then the Act of one may be imputed to all.

They may record what is done in their View, which being a Conviction, they may *fine* the Offenders, and commit them till paid; but Mr. Dalton says, the best Way is to certify this Record into B. R. that they may be fined there.

If they escape being taken by the Justice, this Record being certified as aforesaid, Process shall issue out against them out of B. R.

The Justices may likewise grant a Warrant to those who escape, and bind them to Good Behaviour, or commit them when taken.

Cro. Car. 306. A Town in *Devonshire* was indicted for suffering idle Persons to meet and hold Assizes in Mockery of a Court of Justice; so where one *Gladman* took upon him to be a mock King, and went to the Priory of *Norwich* with a Crown of Paper on his Head, with a riotous Assembly, the Liberty was seized. 1 Cro. 507, 252.

Several were indicted for a Riot, in rescuing a Person from an Arrest near *Charing-Cross*, and were fined 500 l. the Chief of them being a Cocker with a Sword in his Hand, and a Kettle on his Head; and so he stood in the Pillory, and the Rest likewise.

2 Salk. 594. Information against the Defendant for that they *vi & armis clamoribus & vociferationibus illicite, riotose & routose* did hinder the Bailiffs and Burgeses of B. who were assembled on such a Day, &c. to choose a Bailiff for the said Borough, &c. to proceed to

to the Election, &c. the Defendants were found guilty, but the Verdict was set aside, because a Riot is a compound Offence, for there must be an *unlawful Assembling* of more than two Persons, and not only so, but there must be an *unlawful Act* done by them; now this Information did not set forth that the Defendants were *unlawfully assembled*, nor that the Bailiffs and Burgeſſes had any Right to assemble to chooſe a Bailiff, ſo that they might meet to do an unlawful Act themſelves, and then 'tis not unlawful to diſturb them.

The Form of the Record of a Riot upon View.

Suffex, ſſ. **M**emozandum quod 29 die Septembris, Anno Regni Domini, &c. * Nos H. P. & G. N. Arm' duo Juſticiar' pzedict' Dom' Reg' ad pacem in Com' pzed' conſervand' assign' & F. R. Baronettus adtunc Vicecomes ejusdem Com' ad gravem querelam & humilem ſupplication' T. B. de H. in com' pzedict' Yeoman, in propriis perſonis noſtris acceſſimus ad domum manſionalem pzeſat' T. B. in Paroch' de H. in Com' pzed' & adtunc & ibidem vidi- mus R. O. de H. pzed' Labourer, & T. P. de B. in Com' pzed' Yeoman. ac alios malefactores & pacis dict' Dom' Reg' perturbatores nobis ignotos (ad numerum ſeptem perſon') gla- diis baculis, pugionibus bombardis & falcibus armatos & illicite & riotose ad eandem domum aggregatos multa mala in ipſum T. B. comminantes in magnam pacis dict' Dom' Reg' perturbationem ac populi ſui terrorem & contra formam Statuti hujusmodi caſu edit' & probis' ac propterea nos pzeſat' H. P. & G. N. adtunc & ibidem pzed' R. O. & T. P. arreſtari & pproxime Gaole dict' Dom' Reg' in Com' pzed' duci fecimus per viſum noſtrum & recozduz convictos de illicita congregati- one tumultu & riota pzed' ibidem mozatueros quouſque finem dict' Dom' Reg' pzoinde fecerint. In cujus rei teſtimonium huic pzeſenti Recozdo noſtro ſigilla noſtra appoſuimus, dat' apud H. pzed' Die & Anno ſupzadictis.

* Or one Juſtice may make a Record, but not upon this Statute. The Record of one Juſtice is tra- verſable, but not of two; be- cauſe 'tis purſuant to the Statute.

This Record muſt be certain as to the Time, Place, Num- ber, Weapons, Manner, and other Circumſtances, becauſe 'tis a Judgment, and not traverſable; for if upon Examination it appears to be no Riot, or that the Juſtices did not ſee it, yer the Parties are concluded.

But for committing without recording, or making a Record without committing, the Juſtices forfeit 100 l.

Information againſt two Juſtices for not enquiring into a Riot, and found againſt one of them, is good. *Roll. Rep.* 109.

The City of London was fined 1000 Marks when Doctor Lamb was killed in a Riot. *Paſch.* 8. Car. 1.

After the Riot is committed, (if not within the View of the Justices) and the Rioters are gone, the two Justices within a Month may make a Precept to the Sheriff to summon a Jury to enquire of it; and if 'tis found, then they may commit the Offenders, and certify the Inquisition into B. R. that they may be fined, which should not be less than 10 l. for the Principal. Style 303.

The Form of the Precept for summoning a Jury.

Two Justices within a Month after the Riot done. 13 H. 4. b. 7. **H** P. & W. N. Armigeri, duo Justiciar' Domini Regis ad pacem in & pro Com' predict' conservand' assign' necnon, &c. Vicecomiti ejusdem Com' salutem. Ex parte dicti Dom' Reg' tibi precipimus quod venire facias coram nobis apud H. in Com' predict' 29 die Septembris, pro' futur' viginti quatuor probos & legales homines de Com' predict' liberi tenementi ad annualem balorem viginti solidorum aut per Copiam Rotulorum ad annualem balorem viginti sex solidorum & octo denar' ultra omnes expensas ad inquirendum pro dict' Dom' Reg' ac pro indemnitate nostra in hac parte super sacramentum suum de quibusdam illicitis turbis & riotis apud H. predict' in Com' predict' nuper commissis ut dicitur quodque retiores super quemlibet personam impannellat' in eritibus viginti solid' per ipsas forisfaciend' si non compareant ut jurati sint ad inquirend' de premissis ad diem illum & hoc nullatenus omittas sub pena viginti librarum & habeas ibi tunc nomina jur' ill' & hoc preceptum Dat' sub sigillis nostris apud H. predict' vicesimo die Augusti, Anno Regni, &c.

The Form of the Inquisition.

Sussex, ff. **I**nquisition pro Domino Rege capta apud L. in Com' predict' 29 die Sept. Anno Regni, &c. per sacramentum (of the Jury) proborum & legalium hominum de Com' predict' coram H. P. & W. N. Arm' duobus Justiciar' dict' Dom' Reg' ad pacem in Com' predict' conservand' necnon ad diversas felonias transgressiones & alia malefacta in eodem Com' perpetrata audiend' & terminand' assign' qui quidem Juratores super sacramentum suum predict' dicunt quod R. O. de H. in Com' predict' Yeoman, & alii malefactores & pacis Dom' Reg' perturbatores juratoribus predict' ignoti vicesimo die Septembris ult' elaps' vi & armis, viz. Baculis, gladiis, pugionibus, bombardis, falcistris & aliis armis invasibus in messuagium H. R. in Paroch' de H. predict' inter horas decimam & undecimam pomeridianam ejusdem diei illicite & riotose intraverunt & in ipsum H. R. insultum fecerunt verberaverunt & vulneraverunt

berunt in magnam pacis dicti Domini Regis perturbationem & populi sui terrorem ac contra formam Statuti in hujusmodi casu editi & prohibiti.

This Enquiry within the Month must be intended of great Enquiry. Riots; for by Vertue of their Commission, the Justices may enquire into small Riots at any Time afterwards, so that the Limitation of a Month seems to prevent the Forfeiture of 100*l.* by the two next Justices, in Cases of great and notorious Riots, they neglecting to make Enquiry within that Time.

But if they enquire afterwards, the Indictment shall not be quashed for that Reason, because a Riot is an Offence at Common Law, and the Statute is not Penal, but only Directory to the Punishment. *Sid.* 186.

After the Riot is found upon this Inquisition, the Justices may award a *Venire facias* directed to the Sheriff of the County under their own *Teste*, commanding him to cause the Offenders to appear before them; (the Form thereof you may see before in Process on Indictments.)

This is only where the Offenders cannot be taken, and so if the Sheriff return *Non est inventus*, you may proceed to the Outlawry.

But if they appear, the Justices may fine them, and commit them till paid, or may take Sureties by Recognizance to pay the Fine, or may accept a Traverse; which Inquisition and Traverse must be sent to the next Sessions, or into B. R. there to be tried.

The Form of the Traverse, and the whole Record.

Suffex, ff. **A**lias, scilicet ad Sessionem Pacis tentam apud L. in Com' predicta die Jobis nono die Octobris Anno Regni Domini, &c. quinto, coram H. P. & W. P. Ar' & aliis sociis suis Justiciariis dicti Domini Regis ad pacem in Com' predicta conservandam necnon ad diversas Felonias transgressas & alia malefacta in eodem Com' perpetrata audiendam & terminandam assignat per Sacramentum duodecim proborum & legalium hominum jurat presentat existit quod R. O. de H. in Com' predicta & T. P. de B. in eodem Com' cum diversis aliis ignotis malefactoribus vi & armis, viz. Baculis, Gladiis, &c. 29 die Septembris inter horas decimam & undecimam pomeridianam ejusdem diei apud H. predicta clausum & domum ejusdem N. R. riosose fregerunt & intraverunt & prefatus R. N. adtunc & ibidem verberaverunt contra pacem dicti Domini Regis & contra formam Statuti in hujusmodi casu editi & prohibiti per quod ^{He re recito} preceptum fuit ^{the Venire} *Uic' Com' predicta* quod non omitteret, &c. postea; scilicet decimo nono die predicti mensis Octobris Anno supradicti coram prefatis Justiciariis venerunt predicti R. O. & T. P. in propriis

The Clerk
of the
Peace.

personis suis & habit' audit' Indictament' pzed' separaliter dicunt quod ipsi non sunt inde culpabiles & de hoc ponunt se super patriam & W. W. qui pro Domino Rege in hac parte sequitur, similiter, &c. Ideo veniat inde jurat' coram Justiciar' dict' Dom' Reg' ad pacem in Com' pzedict' conserband' assign' ad Session' pacis tent' apud L. die Jobis, &c. tunc prior' futur' tenend' qui nec, &c. ad recogn' &c. quia tam, &c. idem dies dat' est tunc pzedict' R. O. & T. P. ad quam quidem Session' pacis tent' apud L. p'd in Com' p'd die, &c. coram dictis H. P. & W. N. Ar' & aliis sociis suis Justiciar' dict' Dom' Reg' ad pacem in Com' pzed' conserband' necnon ad diversas felonias transgr' & alia malefacta in eodem Com' perpetrat' audiend' & terminand' assign' venerunt tam pzedict' W. W. qui sequitur, &c. quam pzedict' R. O. & T. P. in propriis personis suis & juratoz' p'd per Vicecom' Com' p'dict' ad hoc impannellat' & exacti, viz. (Here name the Jury) similiter venerunt qui ad veritatem de pzemis. dicend' jurat' dicunt super Sacramentum suum quod pzedict' R. O. & T. P. sunt culpabiles & uterque eorum est culpabil' de transgr' & Riota superius specificat' modo & forma ut superius versus eos supponitur. Ideo conf. est per Curiam quod pzedict' R. O. & T. P. capiantur ad satisfaciend' dict' Dom' Reg' de finibus suis occasione transgr' & Riote pzedict' qui quidem R. O. & T. P. adtunc & ibidem pzedict' in Curia pzedict' petierunt se ad finem cum dict' Dom' Reg' occasione pzedict' admitti & inde ponunt se separatim in misericordia Dom' Reg' & finis ejusdem R. O. per Justiciar' pzedict' assess. est ad quinque libras & finis ejusdem T. P. assess. est per eosdem Justiciar' ad decem libras ad opus & usum dict' Dom' Reg', &c.

The Charges of the Justices and Jury are to be paid by the Sheriff out of these Fines, and therefore by the Statute of 2 H. 3. cap. 8. the Fines may be encreased, and an Indenture being made between the Justices and the Sheriff, he is to be allowed it in passing of his Account in the *Exchequer*.

Certificate. If the Truth of the Riot cannot be found by this Inquisition, then within a Month afterwards, the same Justices and Sheriff must certify into B. R. so much of the Fact as appears to them, together with the Names of the principal Offenders, and the Circumstances and Impediments why the Truth was not found, *sub poena 20 l.*

This Certificate may be in *English* by Way of a Letter comprehending the whole Truth, with the Time, Place, &c. and if any material Thing be left out of the Inquisition, it may be supplied in the Certificate.

But if the Sheriff die, or the Justices are put out of Commission before the Certificate made, it cannot be done afterwards.

A Mittimus to the Gaol upon View, &c.

To the Constable, &c.

Middl' ff. **U**Pon Complaint made unto us, H. P. and A. S. Esqrs; Or this two of his Majesty's Justices of the Peace for the County aforesaid, by T. P. of, &c. we did this present 30th Day of September, go to the House of, &c. and there we did see R. O. J. S. and others, assembled together in a riotous and unlawful Company, at H. aforesaid, to the Terror of the People, and against the Peace of our Sovereign Lord the King, and against the Form of the Statute in that Case made and provided: We do therefore herewithal send you the Bodies of the said R. O. and J. S. they being convicted of the said Riot, and unlawfully assembled by our own View, Testimony and * Record, commanding you the said Gaoler to receive them into your Custody, and safely to keep them until they shall from thence be delivered by due Course of Law. And hereof fail not. Given, &c.

* You must be sure to record it. Ut prius.

An Indictment for a Riot.

Suffex, ff. **J**UR', &c. quod J. O. nuper de H. in Com' pzed' Yeoman, R. O. nuper de L. &c. & R. W. nuper de, &c. vicesimo nono die Septembris, Anno Regni, &c. vi & armis, &c. viz. Baculis, Gladiis, &c. riotose & illicite seiplos ad perturband' pacem dict' Dom' Reg' nunc apud H. pzed' in Com' pzed' assemblaberunt & congregaberunt & sic assemblat' & congregat' existen' adtunc & ibidem in & super quendam T. P. in pace Dei & dict' Dom' Reg' adtunc similiter existen' insultum fecerunt & ipsum T. P. adtunc & ibidem verberaber' vulneraber' & maletractaber' & alia enozmia ei intulerunt ad grave dampnum ipsius T. P. ac contra pacem dict' Dom' Reg' corzon' & dignitat' suas necnon contra formam † Statut' in hujusmodi casu edit' & provis.

† If those Words are omitted, the Indictment is not good.

Riot in cutting and carrying away of Corn.

Middl' ff. **J**UR', &c. quod J. O. nuper de H. &c. R. O. nuper de, &c. & T. P. nuper de, &c. Congregatis eis quamplurimis aliis malefactoribus & pacis Dom' Reg' perturbatoribus ignotis ad numerum undecim personar' tricesimo die Septembris Anno Regni, &c. quinto, vi & armis, viz. baculis, gladiis, bombardis & falcastris & aliis armis inbasivis apud H. pzed' in Com' pzed' illicite & riotose assemblaberunt & clausum cujusdam T. P. apud H. pzed' in Com' pzed' adtunc & ibidem illicite fregerunt & intraverunt & duos

decim caretat' feni ibidem nuper crescen' balozis, &c. de bonis & catallis pzed' T. P. iniuste riotoſe & routiſe aſportaverunt contra pacem dict' Dom' Reg' cozon' & dignitat' ſuas, &c. & contra formam Statut', &c.

Riot in a Park.

Suffex, ff. **J**UR', &c. quod R. O. de, &c. & T. P. de, &c. ut prius (to the Word Clausum) apud Clausum & Parcum cuſusdam J. S. Armiger in R. in Com' pzed' illicite riotoſe & routiſe ſeſe aſſemblaverunt & congregaverunt ad pacem dict' Domini Regis perturband' & ad tunc & ibidem in quendam W. M. Yeoman, cuſtodem parci pzed' & in R. W. ſerbien' pzeſat' J. S. in pace Dei & dict' Domini Regis exiſſen' inſultum ſecerunt & pzed' R. W. cum quibusdam bombardis globulis plumbeis onerat' que idem R. O. J. O. & T. P. ad tunc & ibid' habuer' & tenuer' vulneraverunt dantes eidem R. W. cum globulis plumbeis pzed' in & ſuper dextram partem pectoris ſui unam plagam profunditat' dimid' pollicis & latitud' unius pollicis ita quod de vita ejus deſperabatur, &c. & alia enozmia eis intuler' ad grave dampnum ipſozum W. M. & R. W. & contra Pacem, &c.

Riot for pulling down of Hedges, &c.

* If there is no Addition of Place the Indictment may be quash'd. 1 Bull. 183. Suffex, ff. **J**UR', &c. quod R. O. * nuper de, &c. T. P. nuper de, &c. cum aliis malefactoribus ſibi congregatis & pacis Domini Regis perturbatozibus ad numerum viginti perſonar' per inſigation' & procuracion' ejusdem R. O. in magnum terrorem ſubditoz dict' Dom' Reg' triceſimo die Septembris Anno Regni, &c. quinto, vi & armis, viz. baculis, gladiis, bombardis & falcaſtris apud H. pzed' in Com' pzed' Clausum R. B. Ar' ibidem fregerunt & intraverunt & ſepes ipſius R. B. ad numerum quadzinger' pedum ad tunc & ibidem irruerunt & proſtraverunt & ſoſſat' ibid' exiſſen' ad tunc & ibidem cum ligonibus & rutellis foderunt & impleverunt ad grave dampnum ipſius R. B. & contra formam Statuti in huiusmodi caſu edit' & probis. & contra pacem dict' Dom' Reg' cozon' & dignitat' ſuas, &c.

Robbery.

Robbery.

THIS is a felonious and violent Taking Money or Goods from the Person of another, to any Value, putting him in Fear; for without putting in Fear, 'tis no Robbery. Dyer 224.

My Lord Coke tells us, That 'tis called Robbery, because Goods were taken *quasi de la robe*, that is from the Person, as he calls it; but the Learned Sir Henry Spelman, gives us a different Account of the Word, viz. That in the Time of the Saxons, it was usual for Travellers to lodge in any Man's House for one Night; for in those Days they had but very little Money, and no Inns; that *Roab* in the Saxon Language signifies a Garment; and because Rogues did steal the Clothes of such Travellers (for they had nothing else to lose) therefore they were called *Robatores*, and the Crime it self *Roberie*; so that at first it was not a Taking from the Person, for the Clothes were usually stolln in the Night after the Travellers were at Rest: But now it must be a Taking from the Person; and it is the Violence and putting in Fear distinguishes this Offence from a Cut-Purse, which is *Clam & Secrete*.

Now an Assaulting without taking any Thing, is no Rob- What is a Taking, and what not.
bery.

But commanding a Person to deliver, and he doth it, this is a Taking and Robbery, though the Thief doth deliver the Thing taken back again.

So is Compelling one to swear to bring him Money, and he doth it; if the Wife receives it, this is a Taking.

And all that are in Company (though the Fact is done by one alone) are Principals,

Three come to rob B. and one doth the Fact ought of the Sight of the other, who afterwards returns to them, 'tis Robbery in all. 1 And. 116.

If being pursued, and endeavouring to escape, the true Man From the
let his Hat or Money fall, and the Thief take it up; this is a Person.
Taking from the Person.

So is Taking in his Presence, for in Law this is a Taking from his Person.

Assaulting one, and putting him in Fear, and then driving away his Cattle in his Presence; this is taking from his Person, and Robbery.

The Defendant being on Horse-back, desired the Prosecutor 2 Roll. Rep.
to open a Gap that he might ride through, and the Prosecutor 154.
going up a Bank to open the Gap, the Defendant rode up to him, and put one Hand on his Shoulder, and the other in his Pocket, and took out his Purse, which the Prosecutor seeing

in his Hand demanded it, but the other refused to deliver it, whereupon he was indicted for a felonious Taking his Purse from his Person, and was convicted; but had his Clergy, because the Purse was not taken away with any *Force or Violence*, so as to put the Prosecutor in Fear.

All who are guilty of Robbery shall lose their Clergy; and if two go together to rob on the Highway, and one commits the Fact, and the other stands at a Distance, and takes nothing, yet he is a Robber.

4 & 5
W. & M.

By a late Statute, he who apprehends and prosecutes an Highway-man to a Conviction, shall, within a Month afterwards, receive of the Sheriff of the County where the Robbery was committed 40 *l.* producing the Certificate of the Judge or Justices, before whom the Person was convicted.

And if one is killed in taking a Highway-man, those who have a Right to administer, shall have the 40 *l.* and he who takes, prosecutes, and convicts, shall have the Horse, Furniture, Money, and other Goods of the Highway-man, unless stolen.

6 G. c. 23.

The Streets of *London* and *Westminster*, and of other Cities, Towns and Places, shall be deemed Highways, and all Certificates hereafter to be signed for Convictions for Robberies, shall be signed and paid without any Deduction or Fee, excepting 5 *s.* for Writing and Drawing the same, as well where the Offender pleads guilty, or is convicted on Evidence; the Person taking any other Fee or Reward forfeits 40 *l.* to be recovered by Action of Debt, &c. in the Courts at *Westminster*, to the Use of the Person entitled to such Certificate.

Sid 263.

The Hundred is chargeable, if the Robbery is committed in the Day-time; and therefore if 'tis done in *January* after Sun-setting; or if a Highway-man compel a Waggoner in the Day-time to drive his Waggon out of the Way, and then robs him in the Night; this shall likewise be a Robbery in the Day, because the first Seizure was a Robbery, and the Hundred in both Cases shall answer it.

Indictment for Robbery.

Suffex, ff. **J**UR', &c. quod R. O. nuper de H. in Com' pzed' Labourer, tricesimo die Septembris Anno Regni Domini, &c. quinto, vi & armis, inter horas octavam & nonam pomeridian' ejusdem diei in alta via Regia juxta quendam locum vocat', &c. in Parochia de H. in Com' pzed' in & super quendam T. P. de H. pzed' in Com' pzed' Yeoman, in pace Dei & dia' Dom' Reg' adtunc & ibidem existen' insultum fecit & quinque libras legalis monete Bag' Brit' in pecuniis numeratis de bonis & catallis pzed' T. P. adtunc & ibidem invent' a persona ipsius T. P. adtunc & ibidem violenter

violenter & felonice cepit & asportabit in magn' pzed' T. P. ter-
rozem ac contra Pacem dict' Dom' Reg' coron' & dignitat' suas.

Rogues. See Magabonds.

Rout.

THIS is where three or more Persons are disorderly as-
sembled, to commit any Act with Force, if they move
from the Place where they first met together, tho' they do not
put the Act in Execution.

Sabbath.

THE Observation of this Day is not only a Divine Com-
mand, but a very wise and politick Constitution, for it
gives a Countenance to Christianity, and keeps bad Men from
growing worse.

The Prophanation of this Day doth generally arise from,

1. Covetousness :

Or,

2. Licentiousness. }

First, From a covetous Desire of Gain, as *per Stat. 1 Jac. 1. cap. 11.* Shoemaker putting Boots or Shoes to Sale, forfeits 3 s. 4 d. and the Goods; Then by the Statute of 3 *Car. 1. cap. 1.* Carriers, Drovers, Waggoners travelling on that Day, such are prohibited under the Penalty of 20 s. for every Offence.

Butchers killing or selling, or causing to be kill'd or sold, or privy or consenting to kill or sell Meat on that Day, forfeit 6 s. 8 d. for every Offence. 3 *Car. 1. cap. 1.*

The Proof must be before one Justice by two Witnesses upon Oath, or by Confession of the Party, unless the Fact was done in View of the Justice.

Prosecution within six Months after the Offence.

These Forfeitures are recoverable by Distress on a Warrant, or by Bill or Information in Sessions, to the Use of the Poor where taken.

But tho' the Driving is through several Parishes, yet there shall be but one Forfeiture for one Day.

By 29 *Car. 2. cap. 7.* the Conviction is made more easy, and by this Statute, publick and private Duties of Piety are en-
joined,

joined, all worldly Business is prohibited, and all above the Age of 14 Years offending in the Premises, forfeit 5 l. to the Use of the Poor; but the Justice may reward the Informer out of the Penalties, so that it doth not exceed the third Part.

Drovers, or their Servants, coming to their Inns on that Day, forfeit 20 s. for every Offence.

The Prosecution must be within ten Days after the Offence.

The Proof by one Witness upon Oath before one Justice, and if the Offender is not able to pay the Forfeiture, he must be put in the Stocks for two Hours.

Secondly, Irreligious Licentiousness. Per 1 Car. 1. cap. 1.

Meeting together out of their own Parish for any Sports or Pastimes, they forfeit 3 s. 4 d. each.

Prosecution must be within a Month, &c.

Proof by one Witness before one Justice, or Confession of the Party.

Forfeiture is for the Poor of the Parish where the Offence is committed; and to be levied by Distress on a Warrant, &c. and in Default thereof, the Offender is to be put in the Stocks for three Hours.

Any Process served on this Day, except for Breach of the Peace, Felony, or Treason, is void; and the Person serving the same, must answer Damages as if he had done it without a Warrant. 29 Car. 2. cap. 7.

But this Statute doth not extend to dressing of Meat in Inns, Cooks Shops, or Viſqualling Houses.

All the Laws for frequenting of Divine Service on this Day, are still in Force, notwithstanding the Statute of 1 W. & M. cap. 18. unless Persons go to some Congregations tolerated by that Act.

A Warrant to levy the Forfeitures on such who use Sports on that Day.

To the Constables, &c.

Car. 1. c. 1. Suffex, ff.

One Justice

upon View,

Confession,

or Oath of

one Wit-

ness.

Prosecuti-

on must be

within a

Month af-

ter the Of-

fence,

WHereas T. P. of, &c. J. O. of, &c. and R. S. of, &c. have been lawfully convicted before me, That they, and each of them, did on the 8th Day of November last past, being the Lord's Day, meet, and were present with a Concourse of other People out of their own Parishes, for Sports and Pastimes, viz. to play at Foot-ball (or as the Case is) contrary to the Laws in that Case made and provided, by Reason whereof each of the Persons before-mentioned hath forfeited 3 s. 4 d. for the Use of the Poor of your Parish: These are therefore in His Majesty's Name to command you forthwith to levy the respective Sums of 3 s. 4 d. on the respective Goods

Goods And Chattels of the several Offenders before-mentioned, by Distress and Sale thereof, rendring to them the Overplus, if any; and in Case no such Distress can be had, that then you cause the said Person or Persons, wanting such Distress, to be set publickly in the Stocks for the Space of three Hours. Given under my Hand and Seal, &c.

To levy the Penalty on Persons travelling on that Day, &c.

To the Constable, &c.

Suffex, ff. **W**Hereas it hath been duly proved before me, That J. A. of L. &c. being a common Carrier, did the 13th Car. 1. 8th Day of November last past, being the Lord's Day, travel with his Horses into and through your said Parish of L. contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited 20 s. to the Use of the Poor of the said Parish. These are therefore, &c. to command you forthwith to levy the said Sum of 20 s. on the Goods and Chattels of the said J. A. by Distress and Sale thereof, rendring to him the Overplus; and that you see it employed to the Use of your said Parish, as by Law it ought. Given under, &c.

cap. 1.
One Justice
ut prius,
but by the
Oath of
two Wit-
nesses.
Prosecuti-
on must be
within six
Months;
but per 39 Car. 2. cap. 7. ten Days.

To levy the Penalty on a Butcher killing Meat on that Day.

To the Constable, &c.

Suffex, ff. **W**Hereas it hath been duly proved before me, That T. P. of, &c. Butcher, did on Sunday the 8th Day of November last past, in the Parish of, &c. kill (or sell, as the Case is) Victual, viz. one Calf, contrary to the Law in that Case made and provided, whereby he hath forfeited 6 s. 8 d. to the Use of the Poor of the said Parish of, &c. These are therefore, &c. to command you forthwith, &c. (as in the former Warrant.)

One Justice;
two Wit-
nesses or
Oath.

To levy the Penalty for exposing Goods to Sale, &c.

To the Constable, &c.

Suffex, ff. **W**Hereas it hath been truly proved before me, That J. O. of, &c. did on Sunday the 8th Day of November last past, expose Apples, &c. to Sale at, &c. contrary to the

29 Car. 2.
cap. 7.
One Justice,
one Wit-
ness.

Prosecution within ten Days. Forfeits the Goods and 5 s.

Law

Sabbath.

Law in that Case made and provided, whereby he hath forfeited the said Goods to the Use of the Poor of the said Parish, &c. These are therefore to require you forthwith to seize the said Goods so put to Sale as aforesaid, and that you sell the same, and employ the Money arising by such Sale to the Use of the Poor of your said Parish, as by Law it ought. And hereof fail not at your Peril. Given, &c.

But crying and selling of Milk, and Works of Necessity and Charity, are excepted.

To levy 5 s. on those who use a Trade on that Day, or any Wordly Labour.

To the Constable and Churchwardens of, &c.

29 Car. c. 3.
One Justice,
one Wit-
ness on
Oath.
Prosecuti-
on within
ten Days
after the
Offence.

Suffex, ff. **W** Hereas it hath been truly proved before me upon Oath, That J. S. and T. U. both of the Parish of, &c. Barbers, (or as the Case is) and being of the Age of 14 Years and upwards, did exercise the Work of their ordinary Callings or Trades, at, &c. on the 15th Day of this instant November, being the Lord's Day, by Reason whereof each of them hath forfeited the Sum of 5 s. for the Use of the Poor of the said Parish. These are therefore to require you forthwith to levy the said respective Sums of 5 s. on the several Goods and Chattels of the Offenders before-mentioned respectively by Distress and Sale thereof, rendering to them severally the Overplus (if any shall be) and that you employ the same towards the Relief of the Poor aforesaid, according to the Statute in that Case made and provided; but in Case of Inability of either, or any of the said Offenders, to pay the said Penalties, or in Default of Distress to be had and taken in his or their Goods, that then you cause such Persons to be set in the Stocks for the Space of two Hours. And hereof fail not, &c.

A Warrant to levy 5 s. on those who do not come to Church, &c.

To the Constable or Churchwardens of, &c.

29 Car. 2.
cap. 7.
One Justice,
one Wit-
ness on
Oath.
Prosecuti-
on within
ten Days.

Suffex, ff. **W** Hereas it hath been truly proved before me upon Oath, That T. U. J. T. and J. O. all of the Parish of, &c. Labourers, and all of them being of the Age of 14 Years and upwards, that they and each of them did neglect to apply themselves to the Observation of the Lord's Day, being the 15th Day of this instant November, neglecting also to exercise themselves on the Lord's Day aforesaid, in the Duties of Piety and Religion publicly either in the Parish-Church of, &c. or in any other Assembly of Religious Worship, by Reason whereof, they and each of them have forfeited

Sabbath.

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feited the Sum of 5s. for the Use of the Poor of the said Parish. These are therefore, &c. (as in the former Warrant.)

A Warrant to Officers neglecting their Duties herein.

To the Constable, Churchwardens and Overseers of the Poor of the Parish of, &c.

Suffex, ss. **W** Hereas I have been informed, That the Lord's Day is often profaned in your Parish by disorderly Meetings of several idle Persons, and by Gaming, Sports and Tippling on that Day, and likewise by several other Means, contrary to the Laws in that Case made and provided; and that you have been very negligent of the respective Duties of your Offices to find out such Offenders, and to apprehend and bring them to Punishment. These are therefore to charge and require you, That from henceforth, and so long as you shall continue in your respective Offices, that you take a strict Account of all Persons within your respective Liberties or Parishes, who shall prophane the said Day by any unlawful Ways or Means whatsoever; and that you make known to one or more Justice or Justices of the Peace of the said County, the Name or Names of such Person or Persons who shall offend in the Premises, within ten Days after the Offence committed, that such Penalties may be inflicted on him or them, as the Law in that Behalf shall require. And hereof fail not, &c.

Sacrament.

D Epraving or doing any Thing in Contempt of the Sacrament, must be committed.

Three Justices may take the Examination of two Witnesses on Oath concerning the said Offence, and bind them in a Recognizance of 5l. a-piece, to appear at the next Sessions and give Evidence; and the Offender being found guilty, is to be fined. 1 Ed. 6. cap. 1.

The Prosecution must be within three Months after the Offence. See the Statute at large.

Sacrilege.

Sacrilege.

THIS is a felonious Taking Goods out of any Church or Chapel: The Offender had no Benefit of Clergy at Common Law.

Saltpetre-Men and Salt.

CANNOT dig in the House of another Person without his Consent, by Reason of the Danger which may happen to the Owner, his Family and Goods, by Thieves and Robbers in the Night-time, the House being open.

Lord Mayor and Aldermen before *May* 1696, and Justices of Peace after *August* 1696, may in Sessions set and publish in Writing the Prices of Salt, and afterwards (if necessary) they may in Sessions correct the Prices: Any Person selling at a higher Rate, or refusing to sell at that Rate, forfeits 5 *l.* for every Offence, to be levied by a Warrant of one Justice between King and Prosecutor; if no Distress, Commitment till paid. 7 & 8 *W. cap.* 31.

Salt.

9 & 10 *W.* **B**Y the Statute 9 & 10 *W.* 'tis enacted, That if any Subject shall ship any Salt, and have paid the Duty, and the Vessel shall be taken, or perish at Sea; that in such Case the Owner of the Salt, upon Proof made before the Justice in the Sessions, of the Loss of such Salt, shall receive a Certificate from the Sessions that such Proof was made before them; and he producing it to the Officer appointed to collect the Duties on Salt, shall be permitted to buy the like Quantity of Salt, (which is expressed in the Certificate to be lost) without paying any Duty for the same.

And to prevent Exactions in the Sale of Salt, the Lord Mayor of *London* and Court of Aldermen, within the Bills of Mortality, and the Justices of Peace in Sessions, may set and publish in Writing the Price of Salt to be sold or exposed to

Sale,

Sale, and may alter and correct the Prices thereof; and any Person selling at a higher Price, or refusing to sell at the Price so set, forfeits for every Offence 5 l. to the King and Informer.

The Penalty is to be levied by a Warrant from the Lord Mayor, &c. or of one Justice by Distress, &c. or in Default thereof, the Party may be committed by like Warrant till he pay the same. Persons dealing in Salt, or making it, and those who buy it to sell again, shall not dispose of it but by *Weight*, 9 & 10 W. after the Rate of 56 Pound-weight to the Bushel, and not by Measure, under the Penalty of forfeiting 5 l. to the Informer for every Offence.

This is to be determined by two or more Justices residing near the Place where the Forfeiture shall be made, or where the Offence shall be committed, who are to summon the Party accused; and upon his Appearance or Contempt, to examine the Fact; and upon Proof made by the Oath of two Witnesses, or by Confession of the Party, to give Judgment, and to issue out Warrants for levying the Forfeitures, which may be sold, if not redeemed within six Days; and for want of Distress, they may commit the Party until he pays the Forfeiture.

But there lies an Appeal from this Sentence to the next Sessions, whose Judgment shall be final.

When Salt is entered to be put on Board, or to be carried by Land, and the Duty paid, or secured to be paid, and all other Money then or before due, upon Account of Salt, before that Time discovered; the Officer upon Notice shall attend in the Day-time the Weighing the Salt; and upon his Neglect or Refusal, forfeits 40 s. to be recovered as aforesaid.

By the Statute of 5 & 6 W. a Duty of one Penny and Half-Duty on Penny is laid upon Salt, and by 7 & 8 W. this Duty is continued for ever; but this is only for Salt made in *England*; for if foreign Salt is imported, 'tis 3 d. per Gallon, per 5 & 6 W. and it must be paid in ready Money upon Entry made before the Landing, or by giving Security to pay it in six Months, otherwise the same, or the Value thereof is forfeited; and for Prompt-Money, the Importer shall have 10 l. per Cent. abated. 5 & 6 W.

Salt conveyed away before Entry, may be seized without Warrant, and brought to the Office of the Collector of the Duty; and if not claimed within ten Days after Seizure, it shall be forfeited and sold at the next General Sale; one Moiety to the King, the other to the Seizor; but if the Owner claims it within 10 Days, and doth not make it appear before the next Justice where the Seizure was made, and that by the Oath of two Witnesses, that the Salt was duly entered, it shall be forfeited as aforesaid; and he who conveyed it away shall forfeit double the Value.

If any Person is aggrieved by any Order or Judgment of two Justices relating to the Duties on Salt, or to any Forfeiture 10 & 11 W.

ture or Offence concerning the same; they may appeal to the Sessions, whose Judgment shall be final.

1 A. c. 13.
9 A. c. 21.
continued
and grant-
ed for e-
ver.

By another Act 1 *Anna*, every Maker of Salt, or Refiner of Rock-Salt, or Proprietor of Salt-works, must make an Entry in Writing of the same at the next Salt-Office to their Pits or Works, and of the Number of Pans, and Situation of their Ware-Houses, or forfeits 40 *l.* erecting or using any Salt-Work, without giving Notice thereof to the next Salt-Office, forfeits 40 *l.*

Refusing to permit an Officer for collecting the Duty, to enter into Works or Warehouses in the Day or Night, in the Presence of a Constable, forfeits 40 *l.*

Salt found in the Possession of any Person, and not entered, and the Duty paid; if 'tis foreign Salt, 'tis forfeited; if *English* Salt, may be seized, and the Offender incurs the same Penalty and Forfeitures, as *per* 5 & 6 *W.* for removing or conveying away before Entry, unless he makes it appear upon the Trial in an Information, that he bought such foreign or *English* Salt, and of whom.

Salt-Carrier, or other Person removing Salt from the Works without Entry made, and Payment of the Duty, the Salt may be seized by the Officers, and they may apprehend the Person, and carry him before a Justice of Peace; and if the Offence is proved, and the Offender doth not pay down the Penalty, and hath no Distress whereon to levy it, the Justice may commit him to the House of Correction, to be whipt, and kept to Labour for a Month.

Obstructing, beating or abusing the Officers, forfeits 20 *l.* to be levied by Distress; and if that cannot be had, there to be sent to the House of Correction, as aforesaid.

2 & 3 A.
cap. 14.
Vide 5. 4.
cap. 8.
5 G. c. 18.

No Salt-maker shall act as a Justice of Peace in any Matter relating to Duties on Salt.

By another Act, the Importation of *Scotch* Salt is prohibited on Pain of forfeiting the Salt, and likewise 20 *s.* *per* Bushel, and the Persons importing it may be apprehended and brought before a Justice, where the Seizure shall be made; and if upon Proof of the Fact, the Offender doth not pay down the Penalty, the Justice may commit him to Gaol for six Months without Bail.

And where Salt is shipped in order to export it, and the Duty is paid, and the Vessel sinks before it shall go out of the Port; or if it is lost at Sea by Storm, or thrown overboard to preserve the Men or Ship; then, upon Proof thereof made to the next Quarter-Sessions, the Court shall give a Certificate of such Proof; which being produced to the Collector of the Salt-Duty, he shall permit the Person to buy the like Quantity as expressed in the Certificate, without paying the Duty.

But

But the Statute varies in the Manner of its Proof; for where a Ship sinks in the Port, and the Salt perishes there, it says generally that Proof shall be made at the Sessions, &c. But in the other Case, where the Ship perishes at Sea, it directs how the Proof shall be made, viz. by two Witnesses on Oath, whereof the Master or Mate to be one, and that it was not perished by Leakage or Neglect of the Seaman.

All foreign Salt imported, cellared, and locked up before the 24th of June 1719, in the Presence of an Officer for the Salt-Duties, shall, at the Desire of the Proprietor or his Agent, be turned over as Stock in Hand, for the Use of the Fishery, free from Duty, subject nevertheless to the same Conditions and Restrictions as all other foreign Salt intended for the Use of the Fishery, and imported after the 24th of June, 1719. 6 G.c. 11.

Vide 6 A. c. 12. and 12 A. Sess. cap. 2. Salt shipped for Ireland, &c. and lost at Sea, or taken by Enemies, the Proprietor or Exporter to make Proof thereof within a Month after, before the Justices at their Sessions, and the Duty to be allowed.

Where any Salt taken on Board for curing Fish, shall after the Duty paid, either perish at Sea, or be taken by Enemies, the Merchant or Owner (on Proof made at the Quarter-Sessions of the County, &c. where he dwelleth, and receiving a Certificate of such Proof, and producing it to the Officer where the Duty was paid or secured) such Security shall be discharged, and so much as was paid shall be repaid on Demand; provided the Proof be made within nine Months after the Loss. 11 A. c. 2.

Scabengers.

THIS Title relates only to the City of London, by a new Statute of 2 W. by which Inhabitants, within the Weekly Bills of Mortality in Middlesex, Westminster, Southwark, and Kensington, are enjoined to sweep the Streets every Wednesday and Saturday, or they forfeit for every Neglect 3 s. 4 d.

Laying Dirt, &c. in the Streets before their own Houses, forfeit 5 s.

Laying Ashes, Dirt, &c. before the Houses and Walls of other Persons, or before Church-Walls, or throwing any noisome Thing in the Common Shore, Highway, or private Vault, forfeit 1 l.

The respective Church-wardens, and Keepers of his Majesty's Palaces, and the Keepers of the Courts of Justice, suffer the like Penalties for the like Offences.

Scavengers.

Hooping or cleansing Vessels in the Streets, mending empty Coaches, or sawing Timber or Stone, forfeit for every Offence 1 *l*.

Scavengers every Day, except Sunday or Holiday, must bring Carts, and give Notice of carrying away the Dirt, or forfeit 2 *l*.

Streets, Lanes and Allies paved at the Making the Act, must be kept so at the Charge of the Inhabitants, before their respective Houses, or forfeit for every Perch or Rod 1 *l*. and for every Week afterwards till it is done 1 *l*.

One Justice may certify to Sessions what new Ways are fit to be paved, and the Sessions may take such Order as they shall think fit, and the Inhabitants of Houses adjudged to be paved or mended, must do the same from such Houses to the Middle of the Highway, or forfeit for every Perch not paved or mended 2 *l*. And for every Week afterwards till done 2 *l*. And when paved, &c. must be kept so, or forfeit 1 *l*. And for every Week afterwards till done 1 *l*.

Ancient Streets must be maintained according to Custom.

The Assessments for Scavengers of the Parishes of *St. Anne* and *St. James's* shall be rated according to the Custom of the City; and new Houses hereafter to be built, shall pay proportionably with others.

Two Tradesmen must be chosen by the Constables, &c. on *Monday* and *Tuesday* in *Easter* Week yearly, to be Surveyors of Highways, who must take upon them the said Office seven Days after the Election and Notice, or for their Refusal forfeit 1 *l*.

And then new ones must be chosen, who must take on them the said Office under the like Penalty, to be paid to such Surveyors who shall hold the Office, which must be employed towards Repairing the Highways; 'tis to be levied by Warrant of one Justice, &c. and in Default of Distress and Payment within six Days after Demand, the Offender must be committed.

Within twenty-eight Days after new Scavengers are chosen, the old ones must account before two Justices for the Money assessed and collected, and what remains in their Hands must be paid to the new ones.

Justices, &c. at Petit-Sessions may give Scavengers Liberty to lodge their Dirt in vacant Places near the Streets, satisfying the Owners; and if their Demands are unreasonable, Justices, &c. may moderate it.

Persons aggrieved by a Tax, &c. or Determination of any Justices, &c. may appeal to the Sessions, whose Order is final.

One or more Assessments, not exceeding 4 *d*. per Pound for Lands, and 8 *d*. for every 20 *l*. of personal Estate, may be made every Year, by such Persons as the Sessions shall think fit; and the Money thus assessed shall be raised and applied according

ding to their Direction; this is to be levied by Distress and Sale, &c. if not paid within fourteen Days after Demand, rendering the Overplus, Charges deducted.

New Sewers made in any of the said Parishes since 12 Car. 2. shall be subject to the Commissioners of Sewers, who may direct Making new ones, and alter any Nuisances, cross Gutters, and Channells in the Streets or Lanes.

Candles must be hanged out of such Houses which join to the Streets, from *Michaelmas* to *Lady-day*, and from the Time it grows dark, till Twelve of the Clock at Night, or forfeit 2 s. except the Inhabitants agree to use Lamps.

A Truss of old Hay exposed to Sale between the last of *August* and the first of *June* following, must weigh 56 Pounds; and from *June* to *August* 60 Pounds, or forfeit per Truss 1 s. 6 d.

Persons suffering Carts, &c. to stand loaded with Hay or Straw after two of the Clock in the Afternoon, from *Michaelmas* to *Lady-Day*, for every Offence forfeit 5 s. and from *Lady-Day* to *Michaelmas*, after three, forfeit 5 s.

Conviction of these Offences is to be by View of the Justice, &c. Confession of the Party, or Oath of one Witness; if by View of the Justice, then one Half is to the Poor, &c. the other to repair the Ways, otherwise to the Poor and Prosecutor.

These Penalties are to be recovered by Distress, &c. by a Warrant of one Justice, &c. to the Constable; or if one Distress can be taken, then if not paid within six Days after Demand, or Notice in Writing left at the House of the Offender by the Constable, must be committed till paid.

The *Wheels* of *Carts* must be six Inches in the Felly, and without Iron, and drawn only with two Horses after they are up the Hills near the Water. Owners offending, forfeit for every Time such Cart is used 1 l. for the Uses, and to be levied as aforesaid.

Country Carts, and *Carts* carrying Goods half a Mile beyond the paved Streets, are excepted.

Swine must not be kept in the House or Back-sides of the paved Streets, on Pain of forfeiting them to the Poor.

Officers may in the Day-time, by Warrant from the Lord Mayor, or one Justice, &c. search for Swine, and drive them away and sell them, and deliver the Money to the Churchwardens, &c. for the Use of the Poor.

Cleansing of Streets, &c. must be managed according to the ancient Usage of the City.

Lord Mayor or any Alderman, may present upon View any Offence within the City and Liberties thereof, and may assess Fines not exceeding 20 s. for every Offence, to be paid to the Chamberlain of London, for the Use of the City.

In Actions commenced for putting 22 & 23 Car. 2. Entitled, *An Act for the better Paving and Cleansing Streets in the City*, or this

School-master.

this Act in Execution, the Defendant may plead the General Issue, and give the Act or special Matter in Evidence; and if the Plaintiff is Nonsuit, discontinue, or a Verdict against him, shall pay treble Costs.

Highways leading from the East-side of *Clerkenwell-Green* to *St. John-street*, shall be paved as this Act directs.

Warrants.

It would very much enlarge this Title to make particular Warrants for every Offence mentioned in this Act, therefore I think the following Directions may be sufficient:

Recite the Proof, *viz.* upon View, Confession, or one Witness.
The Offence, as near as may be to the Words of the Act.
The Forfeiture, and for whose Use.
Then the Clause of Distress.

School-master.

NOT coming to Church, or not allowed by the Bishop of the Diocese, he who keeps or maintains such a Person forfeits 10*l.* per Month, and the School-master himself shall be ever disabled to teach Youth, and shall be committed for a Year without Bail.

The Prosecution must be at the Sessions, &c. within a Year and a Day after the Offence committed.

The Forfeiture is to be divided between the King, the poor, &c. and the Prosecutor.

But conforming before Judgment to the Bishop of the Diocese, or in open Sessions, the Offence is discharged thereby, and also the Penalties thereon incurred. 23 *Eliz. cap. 2.*

None out of the Universities shall keep School, except a Free-school.

But he may keep School in Gentlemen's Houses, not Recusants; so he may if licensed by the Bishop, but not otherwise; if he doth, he forfeits 40*s.* per Day. 1 *Jac. cap. 4.*

The Forfeitures to be divided between the King and the Prosecutor.

Indictment upon the Statute of 23 *Eliz.*

Suffex, si. **J**UR' &c. quod T. P. de P. in Com' predict' Audis magister, a primo die Maii, Anno, &c. usque ad primum diem Octobris prox' sequen' in domo mansionali cuiusdam J. L. apud L. predict' in Com' pred' pueros

ros p̄fat' J. L. ibidem docuit & erudibit, & ulterius fur', &c. quod idem T. P. durante tempore p̄ed' non accessit ad Ecclesiam Parochialem de P. p̄ed' nec ad ullam aliam Capellam sive locum Communis P̄ecationis vel Conventum religiose Adorationis p̄ leges hujus Regni Angliæ tolerat' sed se penitus per totum tempus p̄ed' abinde absentavit, non habens legitimam sue absentie excusationem, nec per Episcopum Diocesis loci illius in qua sita est p̄ed' Ecclesia Parochialis aut per ejus loci Ordinarium licentiat' sive allocatus fuit ad docend' & erudiend' & ulterius quod p̄ed' J. L. voluntarie in domo sua p̄ed' custodivit & manutenuit p̄fat' T. P. per totum tempus p̄ed' modo & forma p̄ed' docentem & erudentem sciens ipsum T. P. modo & forma p̄ed' se absentasse ab Ecclesia & non licentiat' esse docend' in contemptum dia' Dom' Reg' nunc Cozon' & Dignitat' suas ac contra formam Statut' in hujusmodi casu edit' & p̄obis.

Seamen.

IT is manifest, that the Increase of Seamen tends to the Advantage of this Nation both in Peace and War; and for this Purpose we have a Law, that two Justices, or the Chief Magistrate of any City or Town-Corporate, with the Churchwardens and Overseers of the Poor of their respective Parishes, by and with the Consent of two Justices, &c. may put Boys Apprentices to the Sea-Service, under these Qualifications :

- (1) They must be ten Years old or upwards.
- (2) Such as are likely to be a Charge to the Parish.
- (3) Such whose Parents are actually chargeable to the Parish.
- (4) Those who beg for Alms.

These may be bound to Masters or Owners of Ships or Vessels, used to Sea-Service, till the Age of 21 Years.

The Age of the Boy is to be inserted in the Indenture, and that shall be taken to be his true Age, without any farther Proof thereof.

The Church-wardens and Overseers shall pay the Master when the Boy is bound 2 l. 10 s. for Clothing and Bedding, which must be allowed by the Parish in their Accounts.

Such an Apprentice is not to be pressed till he is eighteen Years old.

The Church-wardens must send the Counterpart of the Indenture to the Collector of the Customs in such Port, and it must be sealed by the Master in the Presence of the Collector and Constable where the Master doth belong, and attested by them, and such Collector must enter it in a Book, and shall endorse the Indenture that 'tis registred, and subscribe his Name without Fee, and forfeits 5 *l.* if he neglects or refuses so to do, or makes a false Entry; and this Forfeiture is to be for the Poor of the Parish from whence the Boy was bound.

The Collectors must transmit unstamp'd Certificates to the Admiralty, of the Names and Ages of such Apprentices, and to what Ships they belong; and upon Receipt of such Certificates, Protection shall be granted till the Boy is eighteen Years of Age, but then he may be pressed, and the Master shall receive his Wages.

Any poor Boy bound by the Parish to any other Employment, may, with the Consent of two Justices, &c. at the Request of the Master or his Executors, &c. turn over such Boy, by assigning the Indenture to any Master or Owner of a Ship, &c. for the remaining Time of his Apprenticeship, which Assignment must be registred by the Collector aforesaid.

And to oblige Masters and Owners of Ships to take such Apprentices, there is a Clause, That every Owner or Master of a Ship, from thirty to fifty Tun, shall take an Apprentice; and if he refuses, shall forfeit 10 *l.* to the Poor of the Parish from whence the Boy was to be bound.

The Apprentice thus bound, is to be sent to the Port to his Master at the Charges of the Parish, in the same Manner as Vagrants by the Statute of 11 & 12 *Will.*

Two Justices, &c. near the Ports where any Vessel shall arrive, have Power to hear and determine all Complaints of hard Usage to such Apprentices; and to make such Orders as they are enabled to do in any Case between Masters and Servants.

The Collectors at their Ports to keep a Register of the Names of Masters and Apprentices, and from what Parishes they came, and must transmit true Copies of such Register to the Quarter-Sessions when required; and this they must do without Fee: If they refuse, they forfeit 5 *l.* to the Poor of the Parish from whence the Apprentice comes.

And to encourage Boys voluntarily to bind themselves Apprentices, &c. they shall not be pressed for three Years next after the Date of the Indentures.

And in Order to suppress Rogues, Vagabonds and Beggars, there is a Clause, That all lewd and disorderly Servants, and such Men and Boys as are Rogues, Vagabonds and sturdy Beggars, shall be sent to Sea by Warrant from one Justice directed to the Constable, who is to convey them to the next Town out of the County into his Majesty's Service at Sea.

The

The Forfeitures in the Act are to be levied by Warrant from two Justices, &c. by Distress and Sale of the Goods of the Offender.

Casting away a Ship wilfully, or procuring the same to be done, is a Felon.

None but the Contractors with the Principal Officers, or Commissioners of the Navy, Ordinance or Victualling Office, shall make any Stores of War, or Naval Stores, with the Marks used to the King's Stores, or any Stores with the broad Arrow, by Stamp, Brand, or otherwise, upon the Forfeiture of the Goods, and 200 l. with Costs of Suit; one Moiety to the King, the other to the Informer, to be recovered in the Courts at Westminster.

Like Forfeiture by Persons, in whose Custody such Goods are found, &c.

Personating Seamen, and fraudulently receiving their Monies, forging Letters of Attorney, Bills of Sale, Assignments, or last Wills, personating the Wife's Relations, or Creditors of Seamen, and taking Administration to them, forging Letters of Attorney, Bills of Sale, or other Authorities in the Names of their Executors or Administrators, for the Receipt of Wages due to Seamen, their Aiders or Abettors being convicted, &c. shall, besides other Penalties, forfeit 200 l. as aforesaid, and be committed till paid.

No Seaman's Will (after the 24th of June) contained in the same Instrument with a Warrant of Attorney, shall be good in Law.

No Court or Person shall take more than one Shilling for the Seal, writing or suing forth any Administration, granted to the Wife or Children of any Seaman, dying in Pay of the Navy, unless his Goods amount to 20 l. the Person offending forfeits 10 l. to the Party grieved.

All the Powers in the aforesaid Act are revived and enforced by the Stat. 1 Georgii, and Justices, &c. may mitigate the Penalties of that Act, or in Lieu thereof may inflict some corporal Punishment, by Whipping, or by sending the Offender to some publick Work-house, to be kept to hard Labour for three Months or less.

Principal Officers of the Navy may by Warrant cause Offenders to be apprehended for making Disturbances in any of the Yards, &c. at Pay-days, or any other Occasions relating to the Naval Stores, and may punish them by Fine, not exceeding 20 l. or by Imprisonment in the next Gaol, not exceeding one Week, or in the Hands of the Messengers attending them: The Officers may discharge such Fine and Imprisonment, if they think fit, or for Non-payment of the Fine may commit to the House of Correction, to be kept to hard Labour for two Months, the Fines to be paid to the Chest at Chatham, for the Use of maimed Seamen.

Sessions.

In Cases where greater Punishment is needful, the Officers may bind such Offenders to the Good Behaviour, and to appear at the next Assizes or Quarter-Sessions, with or without Securities, and in Default of Security, may commit to the County Gaol, &c.

Servants. See Apprentices.

Sessions.

IS a Court of Record held before two or more Justices, *Quorum unus.*
 Time of keeping it. Formerly it was discretionary in the Justices at what Time to keep this Court, which made it very incertain; but now by 2 H. 5. cap. 4. 'tis appointed to be kept four times in a Year, viz.

First Week after { *Michaelmas.*
 Epiphany.
 The Close of *Easter.*
 Translation of St. *Thomas* the Martyr,
 commonly called, *Thomas a Becket.*

But Justices of *Middlesex* are not obliged to keep Sessions above twice in a Year; they may do it oftner if they think fit: And Justices of the County Palatines of *Chester* and *Lancaster*, are to keep Sessions only twice, viz. at *Michaelmas* and *Easter*, 32 H. 8. cap. 43.

Place of keeping.

This is not made certain by any Law, therefore 'tis left to the Discretion of the Justices.

If they should happen to be divided in Opinion about the Conveniency of the Place, and some should appoint one Place, and some another, and the Sessions should be held at both Places, 'tis void in both, because the Authority of the Justices being equal, their several Appointments must be so likewise; and by the Nature of the Service there can be no Priority of Time.

The Sessions for *Anglesey* is to be held for ever at *Beuamaris*, by 5 Ed. 6. Dyer 135.

By the Statute 1 *Georgii*, cap. 25. the Justices of the Peace of the County may now adjourn it from Time to Time to any Part of that County, for the Ease of those who are obliged to take the Oaths to the King, but to no other Purpose.

Who ought to appear there.

Two Sorts of Persons ought more especially to attend this Court, viz. those who are lawfully summoned: And these are, Bailiffs

Bailiffs of Hundreds and Franchises, to give an Account of Sessions Process.

Clerk of the Peace, to read the Indictments, to draw Process, and to enroll the Acts of the Court.

Constables of Hundreds.

Coroners, because they are Parties to Exigents, and are likewise Conservators of the Peace; for in some Cases they have Power to commit.

Correction, Master of the House to give a Calendar of such Rogues who have been committed. 7 *Fac. cap. 4.*

Custos Rotulorum, ex vi termini, he is to attend; for he is always a Justice of *Quorum*, hath the Keeping of the Records of the Sessions, and of the Commission of the Peace.

Gaoler, with the Prisoners, and to receive those who may be committed by the Court.

Jurors returned by Sheriff.

Justices of the Peace to certify their Recognizance and Examinations taken by them, and other Matters, &c. if they neglect, they may be fined by *B. R. 3 H. 7. cap. 1.*

Recognizance, those who are bound therein to answer, give Evidence, or prosecute.

Sheriff, or his Deputy, to receive the Fines set by the Court on Delinquents, and return Jurors.

Freedom of Access is incident to a Court of Record as this Privilege is, so that if any Person come voluntarily thither about any of those Business of the Sessions, as to prefer a Bill of Indictment, &c. who come or is compelled to appear to pay the Forfeiture of his Recognizance, he shall be protected from Arrests upon mean Process; and if he happen to be arrested, the Court may discharge him upon Examination of the Matter, and the Oath of the Party himself. 1 *Levinz* 159.

They may hear and determine Trespasses against the publick Powers of Peace, and upon Conviction give Judgment of Fine, or otherwise the Justices in Sessions.

It was the Policy of our Ancestors to establish several Courts in every County, not only for the speedy Administration of Justice, but to suppress Disorders in their first Motion, before they should arrive to such a Power as to disturb the Peace of the Neighbourhood.

This was the Business of County Courts of Sheriffs, and of Tourns, and of *Leets*.

The Authority of those Courts declining for several Years, seems now to be devolved on this of the Quarter-Sessions, which yet maintains a Form of Judicature, though by Custom and Usage 'tis abated, as particularly in Cases of Felony.

For the Power which the Justices have, is either

By Acts of Parliament ;
Or,
By their Commission.

But by both, they have Authority to try *Felons*; for by 4 *Ed. 3. cap. 4* they have Power to hear and determine Felonies, and to inflict Punishment according to Law; and by the second *Assignavimus* in their Commission, which relates only to the Sessions, they have Authority to enquire by a Jury, &c. of all *Felonies*, &c. and likewise of several other Articles therein mentioned; and they may send out Process against the Offenders to bring them in, and then try them, and give Judgment according to Law.

Now tho' they have this Power, yet the common Practice is to try *Petty Larcenies* at Sessions, and the *Felons* are of Course carried to the Assizes by the Gaoler, who takes no Notice of this Court without particular Order.

'Tis true, where a Statute creates a Crime, and appoints before whom it shall be tried; in such Case, if the *Sessions* is not named, they have no Jurisdiction; as in *Forgery* upon the Statute of 5 *Eliz.* which provides that the Indictment shall be taken before Justices of *Assize*, and Justices of *Oyer and Terminer*, for they have an express Clause in their Commission *ad audiend' & terminand'*, yet they cannot proceed in their Sessions against Offenders of this Nature, because there is another Commission of *Oyer and Terminer*, which is distinctly known by that Name: This was adjudged in my Lord *Sanchar's* Case.

9 Rep. 118. B. But there are many Things and Offences which by particular Statutes ought to be done and prosecuted in this Court; as *Alehouse-keepers*, whether they have forfeited their Recognizances. 5 & 6 *Ed. 6. cap. 25.*

Ale, selling it to an unlicensed Alehouse-keeper. 4 *Fac. cap. 4.*
Badgers offending against 5 *Eliz. cap. 12.* without Licence.

Bailiff taking more than 4 *d.* for an Arrest. 23 *H. 6. cap. 10.*

Bastards seizing Goods and Lands of their Parents. 13 & 14 *Car. 2. cap. 12.*

Bridges, upon the Statute of 21 *H. 8. cap. 5.*

Buggery. 25 *H. cap. 6.*

Bulls of Absolution, obtaining them from *Rome*. 13 *Eliz. cap. 2.*

Busshel sealed. 11 *H. 6. cap. 8.*

Carriage of Goods, Prices thereof. 3 & 4 *W. & M. cap. 12.*

Cattle, buying and selling contrary to 22 & 23 *Car. 2. cap. 10.*

Church, refusing to come thither for the Space of a Month,
5 & 6 *Ed. 6. c. 1.* 23 *Eliz. cap. 1.* 29 *Eliz. cap. 6.* 1 *Eliz. c. 1.*
5 *Eliz. cap. 1.*

Church and *Church yard*, striking there with Weapon. 5 & 6 *Ed. 6. cap. 4.*

Clothes

Clothes unlawfully stretched with Ropes, &c. 39 *Eliz. cap. 20.*
Common Prayer, not using or abusing it. 23 *Eliz. cap. 2.*
Conies, Good Behaviour for killing them. 3 *Fac. 1. cap. 13.*

Corn, { Licensing or prohibiting the Transportation. 13 *Eliz. c. 13.*
 { Foreign imported. 1 *Fac. cap. 19.*
 { Transporting into Scotland. 1 & 2 *Ph. & Mar. cap. 5.*

Correction Houses, Order for erecting of them. 39 *Eliz. cap. 4.*
 7 *Fac. cap. 4.*

Cottages, erecting them contrary to 31 *Eliz. cap. 7.*

Counterfeit Letters, and getting Money by them. 33 *H. 8. c. 1.*

Curriers. 1 *Fac. 22. 4 Fac. 6.*

Escape of Felons. 1 *R. 3. cap. 3.*

Escreats of Sheriffs, controuling them by Justices. 11 *H. 7. c. 15.*

Pheasants, taking them in the Night time with Nets, &c.
 23 *Eliz. cap. 10.*

Fish, destroying them by Engines. 17 *R. 2. c. 9. 1 Eliz. cap. 17.*

Forging Deeds. 5 *Eliz. cap. 14.*

Forestalling, regrating and ingrossing. 5 & 6 *Ed. 3. cap. 14.*

Hunting with Vizards in the Night-time. 1 *H. 7. c. 7.*

Hawking or hunting in Standing Corn. 23 *Eliz. c. 10.*

Horses, { Stoned, feeding on Commons above two Years old, and
 { not 15 Hands high. 32 *H. 8. cap. 13.*
 { Property not altered, unless tolled. 2 & 3 *Ph. & M. c. 7.*

Jesuits, and those who harbour them. 27 *Eliz. cap. 2.*

Informers, exhibiting Suits in proper Person. 18 *Eliz. c. 5.*

Inn-keepers, selling Viſuals at unreasonable Prices. 21 *Fac. c. 21.*

Jurors, levying Issues lost by them. 27 *Eliz. 7. 39 Eliz. c. 18.*

Linen made deceitfully. 1 *Eliz. 2. c. 12.*

Logwood used by Servants in Dying. 39 *Eliz. cap. 11.*

Mafs, saying it. 23 *Eliz. cap. 1.*

Master and Apprentice discharging. 5 *Eliz. c. 4.*

Malt, making it. 2 & 3 *Ed. 6. cap. 10.*

Malsters, restraining their Number. 39 *Eliz. 16.*

Money false, concerning it. 3 *H. 5. cap. 7.*

Moss-Troopers, to suppress them. 29 & 30 *Car. 2. cap. 2.*

News false, telling it. 2 *R. 2. cap. 12. R. 2. cap. 11. 1 & 2 Ph. & Mar. cap. 3.*

Perjury, upon the Statute of 5 *Eliz. cap. 9. 29 Eliz. cap. 5.*

Prisoners, { Tax made for relieving them. 14 *Eliz. cap. 51.*
 { *Fac. 25.*
 { Providing Materials to set them on Work. 19 *Car. 2. cap. 4.*

Prophecies, false and fantastical, publishing. 5 *Eliz. cap. 15.*

Riots, Routs.

Rome, maintaining the Jurisdiction of that See. 1 *Eliz. cap. 3.*

Rogues, { Incurrible convicted, may transport them. 13 & 14
Car. 2. cap. 12.
 Branding them. 1 *Jac. cap. 7.*
 Banished, and returning without Licence. 39 *Eliz. cap. 2.*

Sacrament, abusing it. 5 & 6 *Ed. 6. 1 Eliz. 2. 3 Jac. 4.*

Servant assaulting Master. 5 *Eliz. cap. 4.*

Sheep, keeping above 120, or 20 Beasts, &c. 2 & 3 *Ph. & M. cap. 3.*

Soldiers maimed, relieving them by Taxing of Parishes. 43 *Eliz. cap. 3.*

Soldiers wandring are Felons. 39 *Eliz. cap. 17.*

Tile, making and selling. 17 *Ed. 4. cap. 4.*

Toll-Book, whether kept by the Owner of Fair, &c. 2 & 3 *Ph. & M. cap. 7.*

Viſtuallers, about limiting their Gains, and punishing them, 2 *Ed. 6. cap. 15.*

Under-Sheriff entring on his Office before he takes the Oath of Supremacy. 27 *Eliz. cap. 12.*

Usury on the Statute of 13 *Eliz. cap. 8.*

Wages of Labourers. 15 *Eliz. cap. 4.*

Watches on Sea-Coasts. 5 *H. 4. cap. 3.*

Weights and Measures. 9 *H. 5. cap. 8.* 11 *H. 7. cap. 4.* 8 *H. 6. cap. 5.* 11 *H. 6. cap. 1.*

Wine, selling it without Licence. 7 *Ed. 6. cap. 5.*

Wool, conveying it from Place to Place. 13 & 14 *Car. cap. 18.*

Some Things are particularly enjoined to be done in *Easter* and *Michaelmas* Sessions, and cannot be done in any other;
 As,

In *Easter* Sessions, { Assessing Relief to maimed Soldiers. 43 *Eliz. cap. 3.*
 Taxing the Wages of Labourers.
 Appointing Treasurers for County-Stock.
 Rating Parishes for charitable Use-money, &c.
 Assessing the Prices of Carriage of Goods.

In *Michaelmas* Sessions. { Justices who are to controule the *Estreats* of Sheriffs, must be chosen in *Michaelmas* Sessions by the *Custos Rotulorum*, or by the eldest of the *Quorum*.
 Price of Victuals must be then rated, or at *Easter*.

Order to remove a poor Man from *Waking* to *Oswell*, and upon an Appeal the Sessions *superseded* that Order, and then ordered that the poor Man should be sent to *Waking*, these Orders being removed by *Certiorari*, it was moved to quash the Sessions Order, because they have Power only to *quash* or *affirm*, but not to *supersede* an Order, though but for a Time, besides here they have made an Original Order, which they cannot do; it was referred to a Judge of Assize. Must affirm or quash Orders. Salk. 473.

An Order of Sessions was drawn up Specially, to have the Opinion of the Court, which was thus concluded; *And if the Court shall be of Opinion, &c. then, &c.* This was adjudged naught, because the Sessions ought first to determine the Matter, and not conclude to the Opinion of the Court. 2 Salk 486.

Upon an Appeal to the Sessions, they made an Order to quash the Original Order, and to send the poor Man to the Parish from whence he was removed by that Order; it was insisted that the Sessions have only Power to *affirm* or *quash*, but here they made an Original Order; but adjudged that the Order was void as to that Part, and good as to the other Part. Far. 10.

On an Appeal to the Sessions, they discharged the Original Order, but did not say whether for Form, or upon the Merits of the Case, and for that Reason the Court of B. R. was moved to quash this Order of Sessions; but adjudged that they are not bound to set forth the Reason of their Judgment, no more then other Courts, and that where the Sessions discharge an Order upon an Appeal, and it appears to be good, B. R. will intend that it was discharged upon the Merits, and therefore will confirm their Order of Discharge, but if it appear to be bad, then B. R. will intend that it was discharged for Form.

Order of Sessions that the Clerk of the Peace should prosecute *T. P.* upon an Indictment for *Barrettry*, and that the Charge should be allowed out of the County Stock, the Surplus whereof they had Power to dispose to charitable Uses, by Vertue of the Statute, 43 *Eliz. cap. 2.* but adjudged this was not a charitable Use, and that they had no Power to make such an Order. 2 Salk 605.

Order of Removal from *T.* to *B.* and upon an Appeal, the Sessions made an Order to remove him to *A.* a third Parish, which appeared to them to be the last Place of his lawful Settlement, quashed because the Sessions made an Original Order when they ought only to reverse or affirm the first Order.

Strict Words are not required in an Order of Sessions as they are in an Indictment; but Forms are necessary in the Proceedings; and as to Fines imposed there, B. R. may mitigate them. 1 Vent. 37.

The Sessions may bind a Man to his good Behaviour for any rude and insolent Behaviour to the Court; and if he hath no Sureties

Sid. 219.

Sureties, may commit him till he find some; but cannot indict him; and this is according to the Common Law of England.

The Sessions may fine a Jury for not finding a Bill upon plain Evidence; the Jury in this Case were fined 10 l.

And now I have mentioned Fines, it may not be altogether improper in this Place to inform the Reader what grievous Fines and Punishments have been inflicted on Persons for Striking in Westminster-Hall: For as the Court of Sessions should act in Conformity to the great Courts there in the peaceable Administration thereof, by Fighting in the Presence of the Court; the Punishment for such an Offence should bear some Proportion to that which is inflicted on Offenders for Striking in the Presence of the Court above, which is thus:

Dy. 118. b. ff. For Striking a Man in the Face, and threatening to hang him, if he gave Evidence against a Felon, who was then to be tried in B. R. he was imprisoned during Life, to forfeit all his Lands, Goods and Chattels, and that his Right Hand should be cut off, which was done accordingly.

* During Life.

Cro. Eliz. 405.

3 Inst. 140.

Cro. Car. 373.

For drawing his Sword on the Stairs going up to the Court of Requests, tho' it was out of the View of the Courts, Judgment to perpetual Imprisonment.

For assaulting another in the Palace-Yard, sitting the Courts Imprisonment during the King's Pleasure, and fined 1000 l.

In these two last Cases there was no Judgment of cutting off the Right Hand, because the Facts were not done in the Presence of the Justices.

Sid. 229.

Then if before the Trial the Offender is bailed, it must be Body for Body; and formerly this Offence was punishable with Death.

Of their Power over their own Orders.

2 Salk. 494.

The Sessions made an Order, and the same Sessions vacated that Order by a subsequent Order; and both being removed by Certiorari, it was adjudged that they ought not to have returned the vacated Order, and that the Sessions being accounted in Law but as one Day, they may alter their Judgment and make a new Order.

2 Salk. 606.

Adjudged that where an Order is made at the Sessions, 'tis still in the Breast of the Court during all that Sessions, either to alter, revoke, or make a new Order to vacate the former, tho' 'tis drawn up in Form, and that the Court at the Old Bailey have altered and set aside their own Judgment in the same Sessions, where they have given Judgment against a Man to be pressed to Death, and have afterwards allowed him to Plead and be Tried, and then have given another Judgment; the same Thing is done in B. R. where Judgments have been altered during the same Term, and the Sessions as well as the Term are accounted but as one Day.]

Several

Several Parishes joined in Relief of their Poor, but the Poor encreasing in one of them, they relieved their own Poor separately, and that Parish where the Poor encreased complaining to the Sessions, where two Judges were present, it was ordered that the Parishes should join again to relieve their Poor; but at another Sessions it was ordered that they should relieve separately; this last Order was quashed, because one Sessions cannot alter an Order of another Sessions where any of the Judges are present.

The Caption of an Indictment at the Sessions was thus: *Of the Cap.*

fl. Sessio tent' vicesimo & vicesimo octavo die Julii, &c. this was adjudged to be ill, for tho' the Sessions may be adjourned from one Day to another, yet that must appear distinctly, and not as if they were sitting from the 20th to the 28th Day of the Month. *tion of Indictments. 2 Salk 605.*

When a Justice of Peace was Surveyor of the Highways, and a Matter coming in Question at the Sessions concerning his Office as Surveyor, and he joined in making the Order, and his Name was put to the Caption, for that Reason it was quashed. *2 Salk 607.*

Setting-Dogs. See Dogs.

Sewers.

THE Laws of *Sewers* are very ancient, tho' the first Statute concerning them, is that of 6 H. 6. cap. 5. for long before the Making of that Law, the Kings of England might and did grant Commissions for the Surveying and Repairing Sea-Banks, Rivers, &c. and usually the Justices of Peace are made Commissioners: For which Reason I shall enlarge upon this Title.

By the Common Law, the King hath,

1. *Imperium Regale* over the Sea, &c.
2. *Potestatem Legalem.*
3. *Proprietatem tam soli quam aquæ.*
4. *Possessionem & proficuum reale & personale.*

The old Law-Books mention the Sea to be within the Ligeance of the King as of his Crown of England, and being under his Dominion, He and his Predecessors have by Letters Patents granted to the Admiral of England Power *in causis Maritimis.*

Now no Man can delegate a Power which he hath not, and this shews the Lawfulness of it. He likewise grants to him,

S f

Bona

Bona in mare deperdita super mare emergentia & extra mare projecta, which are Profits arising in the Sea.

The King having therefore this Sovereignty over the Sea, the Ground covered with the Waters doth of Right belong to him, and by Consequence 'tis a Royal Escheat to the Crown when left dry.

But Lands, which *alternis vicibus* are wet and dry, are not *relinquished*, and therefore may belong to the Subject, who may likewise have personal Profits arising on the Sea, as a free Fishery; so Tithes of Fish may be due to the Parson, and this (though not in a Parish) he may have either by Prescription or Custom, because these are Things which lie in Use; and this may be a Reason why the Subjects cannot claim Ground covered with the Sea, because it cannot be bounded by Custom or Prescription.

Lords of Manors may be entitled to Lands between High and Low Water-mark, because such Lands lie dry every Day.

23 H. 8. c. 5. But to prevent the Inundation of the Sea, the Stat. of 23 H. 8. was made, which was a Temporary Law, but made Perpetual by 3 Ed. 6. cap. 8.

In this Law there is a Form of the Commission (which must be under the Great Seal) and the Oath of the Commissioners, who are a Court, notwithstanding that Word is not named in the Statute, for they are called *Justices*; they have Power to make Orders which have the Force of Judgments, and Writs of Error have been allowed to reverse such * Judgments, they may issue out Process to compel the Performance of their Orders, and therefore in † Gregory's Case they are allowed to be a Court of Record, but then there must be six of the Commissioners, which shall sit by Vertue of this Court.

* But not since this Statute, March 19, 1671.
† 6 Rep.

They cannot intermeddle, unless it be in Cases of publick Prejudice as well as in publick Streams, for if they decree a Stream to be straitned, so that the Meadows of a particular Person were overflowed, this is a private Damage, for which an Action on the Case will lie.

But they have Power	{	Over the Person, by	{ Fine. Amerciament. Imprisonment.
		Over the Goods, by	{ Distress, and Sale.
		Over the Lands,	{ By charging them; or, By Sale.

Fine.

They may fine for ill Language, or for Contempt of the Commissioners in Court, or for any Disturbance there; for
eqn-

contemning their Orders ; for refusing to obey them ; they may fine their Officers for neglecting their Duty ; for refusing to accept of an Office being chosen, or misdemeaning himself when in Office ; for setting up Piles and Stakes in great Rivers, this being a *Purpresture*, which is in Nature of a *Nusance* at Land, but then it must be presented to be *vi & armis*.

They may fine the *Sheriff* if he doth not attend upon Notice, or if he neglect to return a Jury having a Warrant from them for that Purpose.

They may likewise fine a *Furor* for departing after his Appearance is recorded.

These Fines, and likewise *Amerciaments*, must be every Year estreated into the *Exchequer* by the Clerk of the Commissioners, or he forfeits 5*l.* for every Default. 13 *Eliz. cap. 9.*

They cannot impose a Fine upon a Township, and levy it upon one Man, for it ought to be upon every Inhabitant in respect of his Estate. 2 *Cro. 336.*

These are usually set by the *Fury*, and are generally for Of-*Amercia-* fences which consist in *non agendo*, and in this respect they differ *ments.* from Fines, for those are imposed on Offenders for doing what they ought not.

Offences for which Persons are amerced, cannot be found to be by Force, because they arise by *Sufferance*, *Neglect* or *Non-feazance*.

By suffering Walls or Banks to be in Decay, by neglecting to repair a Bridge, Causeway, or to cleanse a River, and the like, &c.

By casting, Dirt, Sand, &c. in a River ; 'tis true, this is an Act done, and therefore the Presentment must be, that it was done *vi & armis*, or that 'tis a *Purpresture*, and then the Offender may be amerced.

Amerciaments may likewise be set by the Presentments of Surveyors.

They cannot *Imprison* for disobeying their Orders, as they may for a *Contempt* in their Presence. *Sid. 145.*

A Tax ought to be made according to the Quantity and Quality of Acres, and not according to the Number of Persons.

A Rate or Tax being imposed on a Person, and he refusing to pay it, the Commissioners may grant a Warrant to distrain. 2 *Cro. 336.* 5 *Rep. Rook's Case.* 2 *Bull. 198.*

They cannot Tax a whole Township, but must set it upon particular Persons.

And in such Cases, the Goods of the Person upon whom 'tis imposed may be taken any where, but if it be upon a Presentment *ad reparandum vel amovendum*, then the Distress must be taken within the Bounds of the Commission.

Where an *Assessment* is made upon particular Lands, a Stranger's Goods may be taken there, but not otherwise ; but where

Lands are not charged, but the Person only, as by *Fines, Amerciaments, &c.* then the Goods of the proper Person must be taken, and of no other.

These Goods may be sold, but not without a Warrant from the Commissioners, and so long as they remain in the Custody of the Officer who acts under the Commissioners, they cannot be reprieved, because the Sheriff hath not so large an Authority as they have, but the Goods being sold may be then replevied in the King's Courts alone.

Where Lands may be sold. Lands may be sold for Sesses, and Charges imposed by the Commissioners which lie in Payment.

'Tis true, where a Man holds Lands by the Payment of a certain Sum towards the Repair of a Sewer; tho' this consists in Payment, yet upon this Neglect the Commissioners have no Power, until they first make an Order for the Payment, &c. because it ariseth by the Tenure of the Land, and not by Vertue of the Statute.

But if Lands are held generally to repair, &c. and the Sum certain is not known, though this is a Payment which ariseth likewise by Tenure, yet if the Commissioners impose a Sum, and the Person neglects to pay it, the Lands may be sold by their Decree.

But no Decree can be made for Sale of Lands, which are not within the Limits of the Commission, nor for a Copyhold, because that might be the Prejudice of the Lord, nor for Non-payment of *Fines* and *Amerciaments*, because those are Mulcts or Punishments set upon particular Persons, and due to the King.

7 Annæ
cap. 10.
Copyhold.

But now by the Act 7 *Annæ*, any six of the Commissioners may decree the Sale of Copyhold Lands, so as the Purchaser compound with the Lord of the Manor for the Fine, and then the Lord shall at the next Court grant unto the Vendor such Copyhold Lands, &c. for such Estate as shall be decreed by the Commissioners to him, reserving the ancient Rent, and shall likewise admit him Tenant.

And six of the said Commissioners may, by Warrant under their Hands and Seals, give Power to any Person to levy the Money by them taxed upon any Lands, chargeable with any Taxes by Vertue of their Commission; and this shall be done by Distress and Sale of the Goods of the Party that shall not pay, or refuse to pay the same, rendring the Overplus, and deducting reasonable Charges.

These Decrees must be certified into the *Chancery* to have the King's Assent, otherwise they are not binding; that being done, a Decree upon Tenant in Tail will bind his Heirs; it will likewise bind a *Feme Covert* or Infant, but not a Prebendary, Parson, Dean or Bishop, who are seised in their Politick Capacities, because they are restrained by particular * Statutes to make Alienation.

* 1 El. 13.
14 El. 2.
Traverie.

Presentments in a Court of Sewers may be *traversed* and tried there, but not what the Commissioners do upon their View: so if they fine a Person for a Contempt, 'tis not traversable, because 'tis the Act of the Court; if the Party is aggrieved, he must bring a Bill of Equity.

Such as lie upon an Ascent, and can be in no Danger of an Inundation; so likewise where Persons are bound by Tenure, Custom or Prescription, their Lands are exempted. Tithes likewise shall not be charged. Lands ex-
empted
from a
Tax.

Lands which by special Custom are charged to do other Repairs, but not *in non reparando* generally.

If a *Wear* or *Mill*, &c. is built on a Navigable River, or an ancient *Wear* enhanced, the Commissioners may order the Owner to pull down the one, and abate the other, and if he continue them, or build them up again, he forfeits 100 Marks, Wears.
per Stat. of 1 H. 4. 12 H. 4.

If a Stranger sets up *Piles* or *Stakes*, he is to be fined or amerced, and may be ordered to remove the Nuisance.

And if it cannot be found who committed it, the Commissioners may order those to abate it who are likely to receive most Damage.

Sewers, where no Passage of *Boats* is used, nor where the Water doth not ebb and flow, are not under the Survey of the Commissioners by Virtue of this Statute, because their Commission extends only to *Walls*, *Ditches*, *Banks*, &c. by *Coasts* of the Sea, and Marsh-Grounds, which are damaged by the Flowing and Ebbing thereof, or of Fresh Waters descending therein; and therefore a particular Law was made, *Anno* * 3 *Jacob.* * 3 *Jac. 1.*
that the *Walls*, *Ditches*, &c. in or about *London* where no such cap. 14.
Passage is used, and where the Water falls into the *Thames*, shall be subject to the said Commission.

The first Commission by the Statute of 23 *H. 8.* was to continue no longer than five Years; but now by a subsequent Law, Continu-
ance of
Commis-
sion.
viz. 13 Eliz. the Term is enlarged to ten Years, unless it shall be repealed, or determined by a new Commission or *Supersedeas*. 13 Eliz.
cap. 9.

And notwithstanding such Determination by *Supersedeas*, yet the Laws and Orders, made by Virtue of such Commission before it is determined, shall continue in Force without any Return thereof made into the *Chancery*, and without the Royal Assent, until they shall be altered, repealed or made void by the new Commissioners, or any six of them.

But then these Orders must be written in Parchment indented, and under the Seals of the Commissioners, or six of them, one Part whereof may remain with their Clerk, and the other Part where they shall appoint; which Laws shall then continue in Force for the Space of one Year next after the Expiration of ten Years from the *Teste* of the Commission.

And in the same Statute it is enacted, That the Commissioners shall not be compelled to make a Return or Certificate of their Laws or Orders, nor be fined for that Cause.

But this must relate to Certificates and Returns made into the *Chancery*, and not into *B. R.* upon *Certiorari's* deliver'd, and therefore they have been fined for proceeding after the Delivery of such Writs. 1 *Mod.* 44. 1 *Vent.* 66.

And if there is no new Commission within that Time, then the Justices of Peace may execute these Laws for that Year; but there must be six of them (*Quorum unus*) and they must be Justices, &c. of the County where the said Laws were to be executed by Virtue of the Commission expired.

But a new Commission being once granted, though within the Year, the Authority of the Justices is then to cease.

Erecting
and repair-
ing. See
Banks.

It has been held, That these Commissioners, upon great Occasions, may make Orders for erecting *New Banks* and *Cuts*, as well as for repairing the *Old*, so as they compound with the Owners of the Soil.

• 10 Rep.

But this is contrary to the Resolution in the Case of the * *Isle of Ely*, where 'tis held, That the Commission extends only to Reparation, and new Making ancient Walls, Gutters, &c. and not for Recruiting new Rivers; for a Tax for new Inventions, tho' profitable, must be raised by a voluntary Contribution.

Where one is bound by *Prescription*, or otherwise, to repair, he ought to do it, if the Danger is not inevitable; but if 'tis so by his Fault or Neglect, and he is not able to repair, every one who hath any Damage may have an Action against him.

But if the Danger is inevitable, by Reason of the extraordinary Rage and Violence of the Waters; there to prevent a publick Inconvenience, the Commissioners may tax all who are likely to have any Loss, tho' one is bound to repair. 20 *Rep.* *Kighly's Case.* *Style* 179.

And they ought not in such Case to tax him or those only who have Land next adjoining. 3 *Rep.* *Rook's Case.*

They may proceed by { Jury.
View.
Discretion.

1. By Jury impanelled to enquire who hath set up any Impediments, who have neglected to repair, &c. who are bound by Custom or Prescription, Tenure or Covenant, and what Quantity of Lands, what Ground lies within the Reach of the Waters to which any Damage may be done.

And if the Jury find that such a Person ought to repair, tho' he remove it into *B. R.* they will not quash it, or grant a new Trial until 'tis repaired; and there, if upon a new Trial he is acquitted, he shall be reimbursed. *Sid.* 78.

2. By

2. By View, viz. By seeing the Fences, discourfing with Workmen, what is neceffary to be done, and how much it will coft.

By Frontage, viz. Those who having Ground *fronting* the Sea, Who and unless fome other Perfon is bound to repair by *Custom* or *Prescription*. for what Causes are bound to repair.

By Ownership, viz. The Owner of a Bank or Wall: By *Prescription* *ratione terra*; but Bodies Politick may be bound by Custom, without any Land. *Fitz. Abr. tit. plac. 103.*

By Tenure of the Land, viz. If it is given for that Purpose: By *Covenants*, but this doth not bind the Heir, unless he hath Affets by Descent from him who entred into the Covenant.

A *Township* may be taxed, and the Tax levied upon one Person; but then it ought to be on fuch a Person who is to bear fome Part of the Charge, and not upon one wholly exempted.

The Person thus taxed may complain to the Commissioners, who may make an Order for a Contribution according to the Quantity and Quality of the Ground of fuch who are liable to contribute, and they may award Procefs to compel them to pay it.

But the beft Way is, When they have agreed how much to fet on a Township, then to fend for fome of the Inhabitants, and by their Affiftance to make a Rate.

The Parfon is not liable for his Tithes, unless by Custom; but for his Glebe he is, becaufe he had it from a Lay-Donor: but if the Tithes are in the Hands of a Lay-Man, then they are liable to be taxed, becaufe *tunc decima tranfeunt in Catalla.*

Annuities. { By Prescription; if fuch iffue out of Lands which are chargeable to the Tax, then fuch Annuities are not liable to be charged.

Common. { Those who have *Common* of Fishery, Turbary or Pasture in great Fens or Marches, are liable to be taxed; but those who have *Common in Agvis seminatis*, after the Corn severed, are not.

Copyhold. { Is chargeable, but the Commissioners cannot fell the Land for Non-payment.

Fairs. —Are not to be charged for the Profits thereof.

Ferries. { He who hath the Profit of a Ferry may be charged.

Herbage. { He who hath *primam vesturam Terra* may likewise be charged.

Sewers.

- Lessor and Lessee. { The Lessor must be taxed for great Repairs, viz. For building a *New Bank* or *Wall*, or repairing both; but for small and annual Reparations, the Lessee only.
- Level. { If there is an apparent Danger, the whole Level may be taxed, though a single Man is bound to repair.
- Market. —Not taxable for the Profits there,
- Mortgagor. —Is to be taxed.
- Parks. —In the Level must be taxed.
- Patron. —Not liable for his Right of Presentation.
- Port. { To repair a Port, the whole County may be taxed.
- Tenant in Tail in Possession. { Is liable, but not he in Reversion or Remainder.
- Warrens. —In the Level are to be taxed.

I shall conclude this Title with an Explanation of several Terms relating to it, and shall only mention the Writ of *Certiorari*.

- Bay —Is the same with a Creek.
- Bank. { Is the utmost Border of dry Land, made *Ex solo & fundo qua propriis naturis sunt eadem cum terra super qua edificatur*; the Property is to him whose Grounds are next, but the Use and Occupation to all: 'Tis therefore in that Respect like a Highway; if 'tis cut, the Owner of the Soil may have an Action of Trespass; if any one receives a Damage by that Cut, he may have a Special Action on the Case, or the Offender may be indicted.
- Creeks. { Are Inlets of the Sea running into the main Land, having no safe Harbour, or Legal Privilege.
- Coasts of the Sea. { Are such Towns or Territories as lie next the Sea.
- Causeway. { Is a Passage made of Earth, Gravel, Stone, &c. by Art, on some Highway, leading through Grounds surrounded with Water.
- Ditches. { Are Currents of Water *in infimo gradu*, which have no apparent Current, nor any constant Standing.

- Gates. { Arc Engines built with Doors of Timber to let the Land-floods into the Sea.
- Gutter. { This is less than a Sewer, being of a narrower Passage, and the Use of it is private.
- Haven. { Is a little Place of Harbour for Ships, but hath no Privilege.
- These are *loci undique aquis circumdati*. England is a *Peninsula*, which with *Scotland* makes an Island.
- Islands. { *Guernsey* and *Jersey* are Islands, but not within the Realm of *England*; or govern'd by our Laws, the King hath them by his Title to *France*.
- The *Isle of Man* was formerly a little Kingdom, and had a King who was Viceroy to the King of *England*, and is a Member thereof to this Day.
- The *Isle of Wight* was formerly Part of *Hampshire*, and severed from it by the Violence of the Sea.
- Pond. { Is a standing Ditch cast by the Labour of Men in the private Grounds.
- Pool. { Is a standing Water without any Current; 'tis private both in Property and Use, and therefore not within the Commission of Sewers.
- Port. { Is a safe Harbour which hath legal Officers, and where Goods are usually laden and unladen.
- River. { Is a running Stream pent in with Walls or Banks on either Side; and so far as the Sea doth flow and ebb 'tis a Royal Stream, and the Fishing belongs to the Crown, but the Subject may have it by Custom or Prescription; but where the Sea doth not ebb, the Owner of the Soil of each Side hath a Right of Fishing.
- Sewer. { Is a Fresh-water Trench, or small Current, or little River compassed on both Sides with Banks.
- Stream. { Is a Current of Water running over a Level, and not kept in with Banks or Walls.
- Wall. { Is an artificial Work made of Materials brought thither at the Charge of the Party, and therefore belongeth to him whose Grounds do next adjoin.

The Returns and Proceedings of Commissioners of Sewers are all in *English*.

Certiorari and return If they proceed after a *Certiorari* delivered, the Court of B. R. will grant an Attachment, and they may be fined and committed for a Contempt. 1 *Levinz* 288.

The Return was, *quod presentatum fuit per Juratores*, without saying *duodecim*, and for this Reason not good. *March's Rep.* 123. 198.

A *Mandamus* was granted to the Commissioners, for that an *Archdeacon* was made *Expenditor*, he being to be exempted by Law, because it is a Secular Office, and inferior to his Degree. This was Dr. Lee's Case of *Rocheſter*. *Anno 22 Car. 2.*

Sheep. See Pasture.

Sheriff.

IS an Officer of great Antiquity and Authority amongst us, for I find him mentioned amongst the Laws of *Edward the Elder*, and his Son *Athelſtane*, which is now above 770 Years ſince.

And as for his Authority, he had the Cuſtody of the County in thoſe Days for the Uſe of the King, where no *Comes* or *Alderman* preſided, thoſe being ſynonymous Words amongst the *Saxons* and *Danes*.

This Officer is expreſſed in *Latin* by the Name of *Vice-comes*; but Mr. *Selden* tells us, the Particle *Vice* doth not ſignify any Subordination to the *Comes* or *Alderman*: But the Meaning of it is, that this Office was *ſupplere Vicem Comitum*, or *Aldermani*, in ſuch Counties where an *Earl* or *Alderman* governed.

But tho' before the Conqueſt, the *Earl* or *Alderman* was plac'd in moſt Counties, (for as *Bracton* obſerves, the Kingdom was compoſed of Earldoms and Baronies) yet theſe were Feudal or Honorary Dignities, and the County was ſtill ſubject to the immediate Jurisdiction of the King, who had Sheriffs there for that Purpoſe.

And theſe were Perſons ſkilled in the Laws of the Land, for they were Judges of all Matters ariſing within the County; and no Man applied himſelf to a Superior Court, but only in Caſes where Juſtice was not done in the County.

And this appears by the ancient Form of the *Writ of Right*, by which the King commands the Lord to do *Right* to his Tenant, which if he doth not, then he commands the Sheriff to do it, *Ne amplius inde clamorem audiamus pro defectu recti*.

There were two Courts in which Juſtice was then adminiſtered; one called the *Sciremote*, otherwiſe the *Folcmote*, and now the *Sheriff's Tourn*.

The other called the *County Court*. Of both which Courts the Sheriff had a Jurisdiction.

For though in the *Saxons* Times the Bishop of the Diocese, and the Earl or Alderman, were by the Laws of King *Edgar*, who instituted the *Tourn*, commanded to be twice a Year there present, to direct as well in Divine as in Secular Matters; yet that Command was not exclusive to the Sheriff, for the *Vice-domini*, *Præfetti*, *Præpositi*, &c. were likewise to be present in that Court.

The *Tourn* is a Court of Record, held before the Sheriff to *Tourn*. hear and determine small Felonies and Nusances; and out of this Court the *Leet* was derived, and granted to particular Lords of Manors. This Court is to be kept twice in a Year, viz. *infra Mensem Pasch. & Mich.*

The Power of Stewards in *Leets*, and of Sheriffs in the *Tourn*, is the same; but if the Sheriff will enquire into what is usually inquirable at the *Leet*, and which hath been found there, he cannot distrain for an Amerciament upon such a Presentment without being a Trespasser, but in the Lord's Default he may enquire, &c.

Formerly the Sheriff in this Court inquired of all Felonies at Common Law, but of none by Statute; but this was when it was one of the highest Courts which the King had: Now he cannot hold Plea of any Felony, or for any Debt or Trespass, for he is restrained by * *Magna Charta*. * Cap. 13.

In those Days he took Indictments, *Virtute* { *Commissionis* ;
or,
Officii.

The Power which he had by *Commission* from the King, was taken away by the Statute 28 *Ed. 3. cap. 9.* because they abused the Authority which they had, by committing Persons to extort Fines from them, and sometimes meerly out of Malice.

But the Power which they had *Virtute Officii* continued till *Ed. 4.* and they having abused that likewise, by impanelling Jurors without any Freehold, to serve their Purposes, and by awarding Process upon Indictments, by assessing great Fines, and committing several Persons; all this Power was quite taken away by the Statute 1 *Ed. 4. cap. 2.*

'Tis true, they might still take *Indictments* in this Court, but they could award no Process, for they must deliver such *Indictments* to the Justices of the Peace at the next Sessions under the Penalty of 40 *l.* and the Justices by this Statute have Power to proceed as if such Indictments were taken before them.

If they do return the *Indictments* to the next Sessions, they are all void; and if they arrest, fine or imprison, without any Process from the Justices in their Sessions, they shall forfeit 100 *l.* one Moiety to the King, the other to the Party grieved.

But

But he may still commit for an Affray in his Presence, sitting in the Court, or may bind them to the Peace, and commit them for want of Sureties, and may impose a Fine for any Contempt there, or Disturbance of the Court.

Suitors making Default may be amerced and distrained, so may Jurors departing without giving a Verdict.

At this Day, the Authority of the Sheriff in this Court is chiefly to preserve Order and good Government in the County, by Inquiry into Offences committed against the Peace, and of other common Nuisances amongst the People.

And upon Presentments of *Nuisances*, the Offender cannot be amerced there, but such *Presentment* must be certified to the Justices as aforesaid.

But this Court, and the *Leet* also, are now almost disused; the Reason may be, because after the Wars between the Houses of *York* and *Lancaster* were ended, and the Nation wholly at Peace, Men had Leisure to invent new Crimes, which occasioned the making new Laws to transfer the Punishment of such Crimes to a superior Jurisdiction.

Constables were now to present such Offences to those Courts who had Cognizance thereof by these new Laws, and a new Set of Men were introduced unknown to former Ages, and these were called *Informers*, of which there could be no Occasion before, because there were *Leets* almost in every Parish constantly held twice a Year, where the Juries of their own Knowledge, without any *Presentment* or *Information*, might take Notice of publick Nuisances, and of all Offences against the Peace.

The Stewards in these Days were very careful to give the Juries a particular Charge to be exact in their Enquiries, because Sheriffs in their *Tourn* were always watchful and inquisitive of their Actions, and ready to take Advantage of their Neglects, for by this Means the *Leet* might be seized, and then the People were bound to come to the *Tourn*.

County
Court.

The *County Court* still continues. It was instituted by *Edmund the Saxon*, sixty Years before the *Tourn*; but it is not a Court of Record as the *Tourn* and *Leet* are, because these were instituted for the Publick Good, in order to preserve the Peace, and to punish Nuisances; but the other is of private Jurisdiction to determine Causes between the Parties, under the Value of 40 s.

Formerly this Court held Plea of Tithes of Land, in such Case where the Lord of the Manor where the Land lay had not done Justice; and at this Day by a Commission from the King, which is called a *Justicies*, they may hold Plea in personal Actions to any Value; and in some Cases, by this Writ they may hear and determine real Actions.

				l.	s.	d.
Fees thereof;	Sheriff	—	—	00	01	08
	Bailiff	—	—	00	00	04
	Gaoler	—	—	00	00	04
	Bond for Appearance	—	—	00	00	04

If he takes more, he is to pay treble Damages to the Party grieved, and 40 l. to the King and Prosecutor, per Statute 23 H. 6. cap. 10.

A Sheriff took 30 s. for a Warrant upon a *Capias ad Satis*-Hut. 70. *faciend'* on a Judgment for 103 l. This is Extortion at Common Law, but not within this Statute, because it speaks of Fees to be taken upon the Arrest of the Party when *bailed*, and a Man cannot be bailed who is taken upon a *Ca. Sa.*

He shall not send any Provisions to Judges, or Gratuity to his Officers; shall not have above 40, or under 20 Men in Liveries.

Forfeiture is 200 l. per Stat. of 13 & 14 Car. 2. cap. 2.

Letting it to Farm { The same Forfeiture as for Arrest, per Bailiwick County. Stat. of 23 H. 6. cap. 10.

He took Money of the Gaoler for his Place, and his Servant Noy 102. sold the Bailiwick, but the Sheriff took the Money; this was held to be within the Statute of 4 H. 4. c. 5. of letting his County to Farm, and he was fined.

			l.	s.	d.
For Execution, not in Cities or Corporations.	{	Must take no more than for	00	01	00
		every Pound under 100 l.			
		If above 100 l.	00	00	06

Forfeiture is treble Damages to the Party grieved, and 40 l. to the King and Prosecutor, per 29 Eliz. cap. 4.

An Information was brought against the Sheriff of Gloucester Cro. Eliz. upon this Statute, for taking more than 12 d. in the Pound for executing a Judgment out of the *Common Pleas*: The Defendant pleaded the Proviso in the Act, which is, That it shall not extend to Fees for Executions within Cities or Corporations; and upon Demurrer it was objected, That the Proviso related only to Executions on Judgments in their own Courts; but it was held, That it extended to Judgments in all Courts.

He must not take more than Twelve Pence for every twenty Shillings of the yearly Value of the Lands, for executing an *Habeere facias possessionem aut seisinam*, where the Whole exceedeth not the yearly Value of one hundred Pounds, and Six-pence only if under. 2 G. c. 15.

He shall not take Poundage for executing a *Capias ad satisfaciend.* or upon charging one in Execution for any greater Sum than the Debt really due to the Plaintiff, which Sum the Plaintiff shall mark and specify on the Back of the Writ, before it

is delivered to the Sheriff to execute: Sheriff or Bailiff taking more Fees, and being convicted, shall be guilty of Extortion, and shall forfeit treble Damages to the Party grieved, and double the Sum extorted, upon Proof before the Judge of such Court out of which the Writ issued, in such summary Way as to them shall seem meet, and moreover shall forfeit 200 *l.* a Moiety to the Crown, the other Moiety to the Prosecutor, to be recover'd in any Court of Record at *Westminster*, so as the Prosecution be within two Years after the Offence done.

Forcible Entry.	{	He must assist the Justices of the Peace: He must levy the Fines estreated into the <i>Exchequer</i> . He must impanel a Jury to inquire of the Force, upon a Precept to him directed from the Justices; which if he refuse, he forfeits 20 <i>l.</i> between the King and Prosecutor, to be recovered by Indictment in Sessions.
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If he return those who have not 40 *s. per Annum*, he may be indicted. 8 H. 6. cap. 9.

Force.	{	Entering or detaining with Force, the Party grieved may have a Writ directed to the Sheriff upon the Statute of <i>Northampton</i> , by Vertue whereof, if he find the Force, he may make Proclamation, commanding the Offenders to be gone; if they refuse, he may seize their Arms, and commit their Persons, but he cannot make Restitution: This must be by Vertue of the Statute of 8 H. 6.
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Gaol.	{	He is chargeable with the Gaols and Prisoners, and must put in such Gaolers for whom he will answer; but the Gaolers who have the actual Possession shall be liable for wilful Escapes, if they have wherewith to satisfy; and if he suffer a Felon to escape, he shall be hanged. This was done in the Case of a Gaoler in <i>Cambridge</i> , in the Reign of Queen <i>Eliz.</i>
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Indictments.	{	Indictments or Presentments taken in <i>Tourns</i> , must be delivered at next Sessions to the Justices of the Peace, or else the Sheriff forfeits 40 <i>l.</i> per Stat. 1 Ed. 4. cap. 2.
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Juries.	{	Returning any Bailiff, Coroner, Steward, or Servant of theirs on a Jury, forfeits treble Damages to the Party, and 40 <i>l.</i> to the King and Prosecutor. 23 H. 6. cap. 10.
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By

l. s. d.

By the Statute he is to have for the }
Panel _____ } 00 00 04

No Juror shall be returned without an *Addition*.
27 *Eliz. cap. 7.*

Tales-Men shall be returned out of some other
Panel to serve at the same *Assizes*.

Summons of Persons qualified to attend on Ju-
ries must be made *six Days* before, by shewing
the Warrant under Seal of the Office, or by
a Note in Writing under the Hand of the Of-
ficer, to be left at the Dwelling-house of the
Jury-Man.

Juries.

Summoning otherwise than as aforesaid, or ne-
glecting his Duty, or excusing any one for
Favour or Reward, or allowing an Exemp-
tion to any one under seventy Years old, the
Sheriff, Under-Sheriff, or Bailiff, forfeits 20 *l.*
to the Party grieved, or to any one who will
sue for it.

None shall be returned at *Assizes* or *Sessions* in
the County of *York*, but once in four Years.

One Panel of Forty-eight Freeholders or Copy-
holders, each having 80 *l. per Annum*, shall be
returned on the *Grand Jury*.

Oath of Un-
der-Sheriff.

Of Supremacy, and of his Office, may be taken
by him before two Justices of the Peace; if
he act without taking the Oath, he forfeits
40 *l.* to the King and Prosecutor. 27 *Eliz.*
cap. 12.

Peace.

He is *Conservator* of the Peace through the whole
County; he may command any Offender to
find Surety of the Peace; he may *Ex Officio*
take a Recognizance, and so he may by Ver-
tue of his Commission, which is *Commisimus*
vobis custodiam Comitatus.

Plaints.

Plaints shall not be entred in County-Courts, but
in the Name of the Party Plaintiff, either by
himself or Attorney.

He must find Pledges which are known in the
County, to pursue his *Plaint*; and there must
be but one *Plaint* for one Cause, under the
Penalty of 40 *l.*

The Defendant must be summoned by a Bailiff,
under the Penalty of 40 *s.*

Any Justice upon Complaint may examine *Plaints*
and Officers, and if he find them guilty,
shall

Sheriff.

Plaints.

shall within three Months certify the Examination into the *Exchequer*, upon which they shall be convicted to pay the aforesaid 40 s. without farther Enquiry.

Two Justices may view his *Estreats* before they issue out of the County-Court, and there must be two Parts of them indented and sealed by those Justices and Sheriff; one Part to remain with the Justices. If he refuse to appear, the Justices may make a Process directed to the Coroner to compel him; and this is a *Ven. fac.* 11 H. 7. cap. 15.

Warrants.

Making Warrants without the Original Process, if the Offence is confessed or proved by sufficient Witnesses, the Judges shall commit the Offender, and not be enlarged till he pay to the Party grieved all his Cost and Damages to be assessed by the Judge, and 20 l. more, and 20 l. to the King. 43 Eliz. cap. 6.

Sir Lewis Mordant was Sheriff of Bucks, his Father died 20 Aprilis, the Parliament then sitting, so that he was a Peer; but his Office of Sheriff was not determined by his Peerage.

An Indictment against a Sheriff for dividing one Contract into several Plaints.

Midd' ff. **J**UR'. &c. quod cum R. O. de, &c. primo die Aprilis, Anno Regni, &c. mutuasset & accommodasset cuidam T. N. quatuor libras & decem solidos legalis monete M. Brit. solvend' eidem R. O. cum inde requisit' fuisset quodq; R. E. de H. in Com' pzed' Armiger, nuper Ric' Com' pzed' vicesimo primo die Aprilis, Anno, &c. in Curia sua Com' pzed' tent' apud L. in Com' pzed' pro recuperatione debiti pzed' eidem R. O. in eadem Curia (pzed' R. E. adtunc Ric' Com' pzed' existen') scienter fraudulententer & subdole intravit tres separales querelas versus pzed' T. N. qualibet querela pzed' continen' triginta solid' & sic unum integrum contractum in diversas querelas dividit in deceptionem subditorum dict' Dom' Reg' & contra pacem, &c.

Ships. Vide Wyck, and Felony.

Shoemakers.

Journeyman Shoemaker, or Person hired as such within the 9 G. c. 27. Bills of Mortality, accused by the Master employing him of fraudulently imbeziling, selling, pawning, or exchanging any Boots, Shoes, Slippers, cut Leather, Lace, Lasts, or other Materials for making Boots or Shoes not being the proper Goods of the Person accused, any Justice, &c. may, upon complaint on Oath, summon Party accused, or grant his Warrant to apprehend him, and to bring him before the Justice, who on his Appearance or in Default thereof, may proceed to examine the Fact; and either upon Confession, or the Oath of one Witness may convict the Offender, and award the Party grieved reasonable Satisfaction, and if not paid immediately, may grant his Warrant to levy it by Distress and Sale; and if no sufficient Distress, then to be whipt in the Parish where the Offence was committed. *See the Statute at large.*

Silk-Throwing.

Exercising that Trade, not being Apprentice to it for seven Years, forfeits 40 s. per Month to the King and Prosecutor.

Silk-Winder or Doubler, imbezilling Silk delivered to him, or the Buyer of such Silk, shall be punished by one Justice of Peace, by paying the Damages and Charges, not exceeding what the Party grieved shall prove he is damnified or hath expended, and if not paid within 14 Days, shall be whipt, or set in the Stocks. 13 & 14 Car. 2. cap. 15.

Snarers. See Dogs.

Soldiers. See Conies.

Buying Arms of a Deserter, knowing him to be so, forfeits 5 l. to be levied by Warrant of two Justices, being convicted of this Offence at Sessions. 7 & 8 Will. cap. 23, 1 Georgii cap. 3. Arms, Caps, and Clothes. 13 & 14 Will.

T t

Officer

Carriages. Officer of a Regiment marching, shewing the King's Order
 3 Geo. c. 2. to a Justice of Peace, he shall issue out Orders to Constables to
 4 Geo. c. 4. provide Carriages, the Officer paying to the Constable, in
 Hand:

			<i>l.</i>	<i>s.</i>	<i>d.</i>
1 G. c. 3.	Per Mile	{ For a Waggon and five Horses, or for four Oxen and two Horses, or six Oxen ——— }	00	01	00
4 G. c. 4.					
	Per Mile	{ For a Cart and four Horses, (and so proportionably) ——— }	00	00	09

	Officer making a Carriage travel more than one Day, or not discharging him in due Time, or suffering Soldiers (other than the sick or wounded) or Women to ride ———	<i>l.</i>	<i>s.</i>	<i>d.</i>
	Or forcing Constable to provide Saddle-Horses or forcing Horses from the Owners, forfeit for each Offence ———	05	00	00

The Proof must be upon Oath before two Justices, who are
to certify it to the Pay-master General; who shall pay it, and
deduct it out of the Officer's Pay. 4 & 5 W. & M.

4 G. c. 4. No Waggon shall be obliged to carry above twenty Hundred
Weight.

1 G. c. 3. Constables neglecting or refusing to execute Justices Orders,
1 G. c. 34. or Warrant, or any other Person hindring the Execution there-
of, shall forfeit not exceeding 40 s. nor under 10. to the Poor of
the Parish, to be determined by two Justices of Peace, and le-
vied by Distress and Sale, &c.

The Treasurer of the County-Stock shall pay to the Consta-
bles all reasonable Sums laid out for Carriage, out of the pub-
lick Stock, above what shall be paid by the Officers accord-
ing to the Justices Direction, Regard being always had to
the Season of the Year; and if the publick Stock be not suffi-
cient the Justices may raise Money, as for County-Gaols or
Bridges.

Defenter. Any Constables, &c. may take up a Person suspected to be a
1 G. c. 3. Defenter, and bring him before a Justice, and if upon Exami-
1 G. c. 34. nation he shall be found to be a listed Soldier, the Justice shall
6 G. c. 3. send him to the County-Gaol, and give Account thereof to the
Secretary at War.

Justice, &c. may by Warrant directed to the Collector of
the Land-Tax, order him to pay 20 s. to any Person taking a
Defenter.

Harbouring or concealing him knowingly, or exchanging,
or receiving any Arms from him, or Cloaths, or Furniture be-
longing to the King, or changing the Colour of such Cloaths
shall forfeit 5 l. to be levied by Distress, one Moiety to the In-
former,

former, the other to the Officer to whom the Distress belonged; no Officer shall break open any House to search for a Deserter without a Justice's Warrant, on Forfeiture of 20 l. per 4 G. c. 4.
1 Georgii, cap. 34. 6 G. c. 3.

By the Act 1 G. cap. 3. if any Person persuade or procure, or endeavour to persuade a Soldier to desert, he shall forfeit 40 l. which Penalty is by the Act 4 G. c. 4. made recoverable in any of the Courts at Westminster, &c.

No Volunteer shall be taken out of the Service by any Law-6 G. c. 3; Process other than for a criminal Matter, unless for a real Debt, or other just Cause of Action, the Plaintiff or some other Person first making Oath before a Judge of the Court out of which the Process issued, that the Sum is really due, or that the Debt or Damages amounts to 10 l. at least, a Memorandum of which Oath shall be made on the back of the Process. Any Person arrested contrary to this Act, the Judge may examine it on Oath, and discharge the Soldier, and may award Costs to be recovered, as the Plaintiff might have done.

The Plaintiff on Notice given of the Cause of Action, or left 4 G. c. 4; at the Place of the Soldier's Residence before listing, may proceed to Execution other than against his Body. 6 G. c. 3.

Deserting beyond Sea and coming into England or Ireland before he be tried by a Court Marshal for such Offence, such Officer or Soldier shall be tried for the same as if the said Offence had been committed within the Realm. 6 G. c. 3.

If any Soldier depart after he hath taken the Press-Money, Departing; or hath received his Pay, there lies a Writ to the Sheriff, *ad capiend. conductos proficiscend. in obsequium nostrum*, and this my Lord Coke calls *Lex Terræ*.

A Captain (for Advantage) licensing a Soldier to depart, forfeits ten Times the Value of the Thing taken; to be divided between the Queen and Prosecutor, and to be recovered before Justices in Sessions. 4 & 5 Phil. & Mar. cap. 3.

Going beyond Sea to serve foreign Princes, not having before they go taken the Oath of Allegiance, is Felony. 3 Jac. cap. 4.

If he is a Gentleman or Officer, and going to serve a foreign Prince, not being bound with two Sureties not to be reconciled to the Pope, or to consent to any Conspiracy against the King, 'tis Felony. *Ibid.*

Taking Press-Money, and departing without Licence, 'tis Felony. 7 H. 7. cap. 1. 3 H. 8. cap. 5. 5 Eliz. cap. 5.

Coming from beyond Sea, and wandering idly without a Testimonial from a Justice of Peace (near the Place where he landed) expressing the Time and Place of their Landing, and whither they are to pass, and a Time limited for passing, or if they exceed that Time, 'tis Felony. 39 Eliz. cap. 17.

Forging or Counterfeiting such Testimonial, is Felony.

Game.

* Poultry
or Fish, per
13 & 14 W.

1 G. c. 3.

3 G. c. 2.

1 G. c. 3.

'tis 20 s.

Stat. 13 &

14 Will.

1 G. c. 3.

4 G. c. 4.

Destroying Game * without leave of the Lord of the Manor under his Hand and Seal, and being convicted on Oath before a Justice of Peace, if an Officer, he forfeits 5*l.* if a common Soldier, then his Officer is to pay for him 10*s.* Both of these Sums are to be distributed to the Poor of the Parish. 1 *Georgii cap. 3.* 'tis 20*s.* Forfeiture by a Soldier. 6 *G. cap. 3.*

If such Officer after Conviction, and upon Demand, refuse or neglect to pay it within two Days, he forfeits his Commission.

Officer when he receives the Pay of a Regiment, Troop, or Company, must within four Days give publick Notice to Innkeepers, and before they distribute the Money to the Soldiers, must pay and discharge the Innkeepers, &c. Accounts, provided they have no more of a Commission-Officer of Horse, under the Degree of a Captain, for Diet, } *l. s. d.*
small Beer, Hay and Straw *per Diem* than ——— } 00 02 00

For such Commission-Officer of Dragoons ——— 00 01 06

For a Commission-Officer of Foot ——— 00 01 00

And if he has a Horse, then for that Horse ——— 00 00 06

Light-Horseman, Diet, Small-Beer, Hay and Straw }
per Diem ——— } 00 01 00

Dragoon ——— 00 00 09

Foot-Soldier, Diet and Small-Beer *per Diem* ——— 00 00 04

1 G. c. 3.

3 G. c. 2.

Officer refusing to pay the same upon Account produced, and Oath made by two Witnesses at next Sessions, the Justices may certify to the Paymaster of the King's Forces the Sum due, who shall pay the same out of the Arrears of the Offender, or lose his Place; and if no Arrears are due, then he shall deduct it out of the next that shall be due, and the Officer shall be cashiered. 4 & 5 *W. & M.*

1 G. c. 3.

And where Quarters are not paid as the Act directs, and Horse and Foot are in their March, so that no present Subsidence can be remitted, in such Case every Officer shall make up his Accounts before he leaves his Quarters, and give a Certificate by him signed to the Party to whom the Money is due, with the Name of the Regiment, that it may be transmitted to the Paymaster, who is immediately to pay the same.

Absenting himself without lawful Cause, shall be committed for ten Days without Bail, or pay 4*l.* to the King. 4 & 5 *Phil. & Mar. cap. 2.*

Muster.

Any Person making or giving a false Certificate to excuse a Soldier to be absent at a Muster, forfeits 50*l.* and to be cashiered. 13 & 14 *Will.* 1 G. c. 3. 4 G. c. 4.

Officer making false Muster, and any Person signing a false Muster-Roll, or a Duplicate, shall be cashiered, and forfeits 100*l.*

Proof must be by two Witnesses upon Oath before a Court-Martial, and the Forfeiture is to be paid out of the Arrears of his Pay to the Informer. 13 & 14 *Will.* 1 G. c. 3.

Soldiers.

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Next Justice may commit to the House of Correction Persons falsely mustering, or offering so to be, there to remain for ten Days. 13, 14 Will.
1 Annæ.
3 & 4 Ann.
1 G. c. 3.

Lending a Horse to be mustered, forfeits the Horse, if his own; if not, then 20*l.* upon Oath of two Witnesses before the next Justice; the Forfeitures to be paid out of his Pay or Goods, by a Court-Marshall. 4 & 5 W. & M. Per 13 & 14 Will. Proof as before. 1 G. c. 3.

And if he hath no Goods, he shall be sent to the Common Gaol without Bail for six Months, this Forfeiture to be paid to the Informer, and if he is a Soldier, shall be discharged, if he demand it. 1 G. c. 3.

Must give Notice to the Mayor, or chief Officer or Magistrate of the Place where the Soldiers to be mustered are quartered, and they are to be present at such Muster; Commissary neglecting forfeits 5*l.* and no Muster-Roll shall be allowed unless signed by such Mayor or Magistrate. 13 & 14 Will. 1 G. c. 3. Muster-Master.
2 & 3 Ann.

But if such Mayor, &c. shall not attend or refuse to sign the Muster-Roll, then the Commissary may muster the Regiment, &c. without incurring any Penalty, and the Muster-Rolls shall be allowed, on Oath within 48 Hours before a Justice, &c. that such Notice was given. 1 G. c. 3.

The Commanding Officer; at the Time of the Muster, must sign and bring in a Certificate of

The Names of	Sick Absent on Furlows Dead, and deserted, Days of Death, and Desertion,	} Since last Muster.
--------------	--	--

Such Certificate proving false, the Officer is to suffer such Penalties which are appointed for false Musters.

Conviction must be before a Court-Martial, as aforesaid. 13 & 14 Will.

Officer mustering one who is a Servant to another Officer, or receiving Wages from him, or mustering any Person by a wrong Name, is to suffer like Penalties. 13 & 14 Will.

Every Person mustered and in Pay, who shall excite, cause or join in a Mutiny, shall suffer Death, or such other Punishment as a Court-Martial shall inflict. 13 & 14 Will.

If he raise a Mutiny out of England, either on the Land or Sea. 2 & 3 Ann.
3 & 4 Ann.

Refusing to obey his Superior Officer.

Resisting any Officer in the Execution of his Office.

Striking his Superior Officer.

Drawing, or offering to draw or lift up any Weapon against him, * Felony.

T t 3

* Trial by
Detaining a Middlesex
Jury, or
Special Commission.

Soldiers.

Detaining Pay of Soldiers above ten Days, shall give him treble as much: Justices in Sessions may determine this Offence, and commit till Payment of the Forfeiture. 4 & 5 Phil. & Mar. cap. 3.

Paymaster. Every Paymaster and Agent who shall be liable to account with any Executors or Administrators of any Officer or Soldier, shall on Demand deliver a just Account to such Executors, &c. of such Sums as they shall have received for such Officer or Soldier, such Executor, &c. paying for the same. And every Paymaster, &c. offending herein shall forfeit the like Penalty, and to be recovered in like manner, as is appointed by the Act for Colonels or Agents, not giving due Accounts of the Pay to the Officers and Soldiers.

Paymaster detaining Pay from an Officer or Soldier for a Month, or refusing to pay it when due, (*viz.*) Georgii 3.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
Pay. 13 & 14 W. 1 G. c. 3.	Of the two Regiments of Foot- Guards.	To a Corporal of Light-Horse,	} <i>per Week</i>	00	17 06
		To a Trumpeter and Trooper,		00	14 00
		To a Dragoon,		00	08 02
		To a Serjeant,		00	07 00
		To a Corporal and Drummer,		00	05 00
		To a Foot-Soldier,		00	04 00

			<i>l.</i>	<i>s.</i>	<i>d.</i>
In the Army.	{	To a Serjeant,	} <i>per Week</i>	00	06 00
		To a Corporal and Drummer,		00	04 06
		To a Foot Soldier,		00	03 00

And 6*d.* more to each Foot-Soldier at every two Months
13 & 14 W. End: Neglecting upon Proof to a Court-Martial, forfeits 100*l.*
2 & 3 Ann. to the Informer, and to be cashiered. 4 & 5 W. & M. and the
Informer, if a Soldier, to be discharged. 1 G. c. 3.

Paymaster shall receive no Fees, nor deduct more than usual for Clothes, besides one Shilling *per* Pound to be disposed as the King shall think fit, and one Day's Pay in the Year to the Use of Chelsea-College.

Quartering.

1 G. c. 3.

4 G. c. 4.

6 G. c. 3.

None shall be quartered upon Persons without their Consent.
31 Car. 2. cap. 1.

Constables, Tything-men, &c. and no others, shall quarter Soldiers in Inns, Livery-stables, Ale-houses, Victualling-houses, and in Shops, selling Brandy, &c. (Distillers and private Houses excepted) but may not order more Billets than there are effective Soldiers; any Soldier billeted on private Houses, without the Owner's Consent, he may have his Remedy at Law; any Military Officer quartering Soldiers otherwise than allowed, shall be cashiered; Persons grieved may complain to the Justices and be relieved.

Officers

Soldiers.

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Officers and Soldiers shall pay reasonable Prices to be appointed by the Sessions; who shall set reasonable Rates for all Provisions in their March.

Officers taking Money for excusing Quartering Soldiers shall be cashired and incapacitated.

No Foot-Soldiers shall be quartered but within ten Miles of the King's Residence, or in some Garrison where sufficient Barracks are not provided, or upon their Marches; and no Person shall be obliged to quarter them in their Marches more than six Days at a Time.

Justices in Sessions shall appoint what such Soldiers are to pay.

If any High Constable, &c. shall receive or agree for any Money or Reward to excuse any Person from quartering Soldiers, or if any Victualler shall refuse to receive them, and be thereof convicted before one or more Justices, &c. by Confession or Oath, such Constable or other Person shall forfeit any Sum not exceeding 5*l.* nor under 40*s.* to be levied by Distress and Sale of his Goods by a Warrant of such Justice directed to any other Constable of the County, to any of the Overseers where the Offender shall dwell, to be paid to them for the Use of the Poor.

Any one or more Justices may command the High Constable, &c. to give an Account in Writing of the Number of Officers and Soldiers billeted, with the Street and Place, &c.

An Officer quartering Wives, Children or Servants, without the Owner's Consent; if a Military Officer, he shall be cashired, upon Proof made to the Judge-Advocate; if a Civil Officer, he shall forfeit 20*s.* to the Party grieved, upon Proof made to the next Justice of Peace, to be levied by Distress and Sale. 4 & 5 *W. & M.* 13 & 14 *Will.*

Money due to Inn-keepers for Quarters, shall be paid by the Pay-Master, upon a Certificate from the Justices, out of the full Subsistence-Money. 6 & 7 *W. cap. 8.*

Officer, when he receives the Pay of a Regiment, Troop or Company, must within four Days give publick Notice to Inn-keepers, &c. and to appoint them to come to their Quarters, and before they distribute any Money to the Soldiers, must pay their Quarters.

Not giving such Notice, or not paying upon producing the Account by the Inn-keeper, &c. shall be cashired. 13 & 14 *W.*

Conviction must be at Quarter-Sessions, upon Oath of two Witnesses, who must certify to the Pay-master what is due; and the Pay-master not paying, forfeits his Place.

Officers or Soldiers who served *William III.* and who were Trades, disbanded at the End of the War, may exercise Trades tho' they did not serve an Apprenticeship, and may set up such Trades as they are apt and able to occupy, in any Town or Place in the County where born.

T t 4

And

And if indicted, then producing a Certificate under the Hand and Seal of some Field-Officer, or Commission-Officer of the Regiment where he served, or from some General of the Army, and proved by the Oath of one Witness to be true, or by two Witnesses, of his Service to the King, such Person may plead the General Issue; and if he have a Verdict, or the Plaintiff be nonsuited, he shall pay treble Costs.

Producing a false Certificate, shall be committed for three Months, and lose the Benefit of the Act. 10 & 11 W. 3. c. 11.

Work.

If a Soldier come from beyond Sea to the Place of his Birth, and cannot get Work, two Justices shall take Order to set him to Work, or for Want thereof shall tax the Hundred for his Relief. 6 & 7 W.

By the Statute 1 Georgii, cap. 11. If the King shall find it necessary to draw out the *Militia* into Service, then by signifying it to the Lieutenants, &c. they shall oblige all Persons, chargeable to the *Militia*, to provide for Horse-Men a broad Sword, a Case of Pistols twelve Inches long in the Barrel, a Carabine with Belt and Bucket, a great Saddle with Burs and Straps, a Bit and Bridle with Pectoral and Crupper: And for every Foot-Soldier a Musket five Foot long in the Barrel, the Gage of the Bore for Bullets of twelve to the Pound, with a Bayonet to fix in the Muzzle, a Cartouch-box and a Sword, by the same Ways as they might have provided Arms by Virtue of any former Act.

The Collectors of the Trophy-Money must account for it at the General Quarter-Sessions, within twelve Months after the Receipt thereof, and pay the Balance to the Treasurer, appointed to receive the same, within one Month, on Pain of forfeiting treble the Sum unaccounted for, or unpaid; one Moiety to the Use of the County, as the Justices shall appoint, and the other Moiety to him who will sue for it.

Trained
Bands.

*An ABRIDGMENT of the Militia Acts,
13 & 14 Car. 2. cap. 6. and 15 Car. 2. c. 4.
Alphabetically.*

Ability of
the Person.

{ The Lieutenants or their Deputies may examine on Oath the Ability of the Persons to be charged, but not themselves.

Appearing.

{ If a Soldier neglects to appear, two Deputies may commit him for five Days, or fine him; if a Horse-man, 20 s. if a Foot-man, 10 s. But if it is the Person himself who is charged, then three Deputies may fine him 5 l. to be levied by Distress and Sale, &c.

Carts.

Carts.

Deputy-Lieutenants, or their Officers, may charge Carts for carrying Powder and other Materials at 6 *d.* per Mile; and for a Horse employed out of the Cart, they must give 1 *d.* per Mile.

City and County.

Officers and Soldiers of such a Place shall not be compelled to appear out of their respective Liberties to exercise.

Shall be aiding and assisting in Execution of the Statute. 13 *Car.* 2.

Constable.

If the Party charged neglects or refuses to provide the Foot-Soldiers, the Lieutenant or his Deputies may appoint Constables to provide them.

Covenants.

Between Landlord and Tenant, shall not be avoided by the Act.

He who is charged to find a Foot-Soldier, must have in Possession *per Ann.* ————

l. s. d.
50 00 00

Or Personal Estate, other than Stock on Ground, (and so proportionably.)

600 00 00

Foot, and who shall be charged thereunto.

He shall have *per Diem* 1 *s.* or else his Master shall forfeit to him 2 *s.* to be demanded within six Weeks after Default, or before next Muster.

00 01 00

None who hath an Estate of 100 *l.* *per Ann.* or Personal Estate of 2400 *l.* shall be charged to the Foot; but he who hath 100 *l.* *per Ann.* or under 200 *l.* *per Ann.* or is worth 1200 *l.* in Personal Estate, and under 2400 *l.* may be charged either with Foot or Horse.

Horse, and who shall be chargeable.

Lieutenants or three Deputies may charge any; if with Horse and Arms, the Person must have in Possession *per Ann.* ————

l. s. d.
500 00 00

Or in Goods or Money, besides the Furniture of his House (so proportionably.)

6000 00 00

Horse.

None shall contribute to Finding a Horse who hath not in Possession a real Estate *per Ann.* of ————
And Personal Estate in Possession worth, ————

100 00 00

1200 00 00

Not

Soldiers.**Horse.**

Not sending out Horse, &c. not paying the Money towards the Provision of Man and Horse, Lieutenant or three Deputies may fine him, not exceeding 20 *l.* to be levied by Warrant under their Hands and Seals, and employed for the same Uses.

Horseman shall have to maintain } *l. s. d.*
himself and Horse *per Diem* — } 00 02 06

Must bring Powder and Bullets of each a Quarter of a Pound.

His Arms shall be, Back, Breast and Pot, the two last Pistol-proof; a Sword, and a Case of Pistols 14 Inches in the Barrel; a great Saddle with Burs and Straps; a Bit, Bridle, Pectoral and Crupper.

Imprisonment.

Lieutenant or his Deputy may commit Mutineers, and those who do not their Duties at Musters; the Commitment not exceeding 20 Days, and fine them not exceeding 5 *s.*

Imbezilling.

Two or more Deputies may commit him who imbezilleth Horses, Furniture or Arms, till he make Satisfaction.

Isle of Wight.—No Alteration made as to the Militia there.

Lieutenants.

Commission of Licutenancy may be issued out by the King, and the Lieutenants may call Persons together, and arm and form them into Companies, and conduct them to Places to suppress Rebellions, or resist Invasions as the King shall direct.

They may give Commissions to Colonels, Majors and Captains, and other Commission-Officers, and present the Names of Deputies to the King; who approving them, the Lieutenant shall give a Deputation.

They may hear Complaints, examine Witnesses on Oath, and give Redress.

London Militia.

Lieutenants shall continue to list and levy the London Militia and Auxiliaries, as formerly.

Month's Pay

Upon Invasions or Rebellions, the Person charged shall provide a Month's Pay, &c. which shall be repaid out of the Publick Revenue, and the Officers shall likewise be paid out of that Revenue for the Time they were in actual Service, and no Person shall be obliged to provide another Month's Pay until the first is discharged.

Shall

Muster and
Muster Ma-
ster.

Shall be but once a Year, and not to stay above four Days without special Direction from the King or his Council.

He must live in the County, and once a Year every Horse-man is to pay him 1 s. and every Foot-man 6 d. by the Direction of three Deputy-Lieutenants; and in Default of Payment, it may be levied on the Goods of the Person charged, unless Default be found in the Soldier.

Musketeer.

Shall bring Powder and Bullet, half a Pound of each, and a Musket three Foot in the Barrel, the Bore to bear a Bullet of twelve to the Pound; but if fourteen, it shall be allowed; a Collar of Bandaleers, and a Sword; if with Match-Lock, he must have three Yards of Match.

Notice to the
Person.

If the Person doth not live in the County where he is charged, three Deputies shall give Notice to his Servant or chief Tenant, who are to convey it to the Landlord, and to bring his Answer; then if he neglect to provide a Soldier, his Tenant shall do it; and if he refuse, then two Deputies may grant a Warrant to levy the Penalties; which see before in *Appearing*.

Oaths.

Peers must take the Oath of Allegiance and Supremacy before six Lords of the Privy Council, or before others authorized by the King; one Justice of Peace may administer it to a Lieutenant, not being a Peer; Lieutenants may administer it to Deputies, not being Peers; and they to their Officers and Soldiers.

Officers of
Foot.

Shall find no Soldiers or Arms in respect of their Estates.

Pike-men.

Must bring Pikes, made with Ash, not under 15 Foot long; they must likewise have Back, Breast, Head-piece and Sword.

Purbeck.

The Militia thereof shall remain separate from the County of Dorset.

Peers how to
be charged.

By a Commission from the King, under the Great Seal, directed to twelve Peers, of whom five shall assess the Peer, according to the Proportion in the Statute, (except only the monthly Taxes) and they shall put the Authorities in the Act in Execution (excepting Imprisonment) the Charge and Penalties shall

be

Soldiers.**Search.****Serving in Person.****Trained Soldiers.****Tenants.****Tinners in Cornwall.****Tower.**

be certified to the Lieutenants; and then, if any Default shall be made, &c. three of them may cause Distress to be taken and sold, if no Satisfaction be given within a Week.

Two Deputies by Warrant may employ Persons (of which a Commissioned and a Parish Officer shall be two) to search for and seize Arms of those who they shall think are dangerous: This Search must be after Sun-rising, except in Cities, Suburbs, Corporations and Market-Towns, and within the Weekly Bills.

None shall be compelled to serve in Person. Those who are provided by others, must be approved by the Captain, and may be altered upon an Appeal to the Lieutenant or two Deputies; Persons so found and approved, must act under the same Penalties as in the Act; which see in *Appearing*.

The Persons thus approved, must give in their Names and Places of Abode, at the next Muster to two Deputies, or to some whom they shall appoint, that they may be listed; and if they afterwards desert, they shall forfeit 20*l*. Neither shall they be discharged without Leave of two Deputy-Lieutenants or the Captain, on the like Penalty, to be levied by Distress; and if no Distress, then to be committed, not exceeding three Months.

This must not be above four Times in a Year, without Special Direction from the King and Council, and must not be continued to exercise above two Days at a Time.

Shall deduct the Money out of the next Rent, unless the Landlord, within two Months after such Levying, make it appear, that the Fault was in the Tenant.

Lord-Warden of the Stannaries, and such as he shall authorize, shall assess and muster the Tinners.

Constable and Lieutenant of the Tower may continue to levy the Trained-Bands, as formerly.

See also divers Statutes touching the Army and Militia, viz. 8 A. c. 10. 9 A. c. 9. 10 A. c. 10. 12 A. Seff. 1. c. 4. and Seff. 2. c. 4. and 10. which being the same in general with the foregoing, need not here be recited.

Upon

Upon the Landing of King *William* in the West, in the Year 10 A. c. 25. 1688. several Sums of Money were raised by the Lieutenancy in *Dorsetshire*; some Parts whereof are still unaccounted for by the Persons who received it; they are now ordered to account for it to the Sessions, who may call such Persons before them, and order them to pay the Money to the Treasurer of the County-Stock, who shall apply it to the publick Service of the County, as the Sessions shall direct: The Person refusing to account, or neglecting to pay the Money to the Treasurer, being by the Sessions required so to do, may be committed to Gaol without Bail, till he do; or until he give Security to the Justices so to do.

The Lieutenancy shall not issue any Warrant to levy *Trophy-Money* till the major Part of the Justices in Sessions shall have examined, stated and allowed the Accounts of *Trophy-Money* last raised for the Year preceding, and certified such their Examination of the said Accounts, under the Hands and Seals of three or more of them, to the respective Lieutenants or their Deputies.

A Summons for a Master.

To the Constable and Headborough of, &c.

Suffex, ff. **B**Y Command from the Rt. Hon. C. Earl of D. Lord-Lieutenant of the said County, I require you to summon all the Persons written in a List, and hereunto annexed, to appear compleatly armed as L. in the said County, upon Wednesday the 17th of March Instant, at Eleven a-Clock in the Forenoon, and each of them is to bring Pay for two Days, and the Salary for the Muster-Master; every Musqueteer is to bring half a Pound of Powder, and as much of Bullets, and three Yards of Match; and you are likewise required to be then and there present, to give an Account what you have done in the Premisses. Given under our Hands and Seals this seventh Day of March, 1703.

A Summons for a Foot Company.

To the Constable of the Hundred of, &c.

Suffex, ff. **W**Hereas the Persons, whose Names are contained in a List hereunto annexed, are charged to find Foot-Arms, according to the Statutes in that Case made and provided: These are therefore to require you to give Notice to the said Persons, That they provide and appear with the said Arms, and an able Man to bear them at L. in the said County, upon Wednesday the 17th Day of March ensuing, by Ten a-Clock in the Forenoon. And hereof fail not. Given under our Hands, &c. The

Soldiers. Squibs.

The Summons underwritten the Constable must give to the Person who is to provide a Horse.

To Mr. R. B.

Suffex, ff. **B**Y Vertue of a Warrant of J. A. Esq; to me directed, That is to summon you to appear at, &c. on Thursday, &c. between nine and ten a-Clock in the Morning, with a Horse well fitted, and that you bring a Back, Breast and Pot with you, pursuant to the Statutes in that Case made and provided; and you are likewise to bring with you Powder and Bullet, a Quarter of a Pound of each, and the Muster-Master's Salary.

Dated 18 Martii,
1703.

J. H. Constable.

Indictment against a Soldier for Deserting, &c.

Midd' ff. **J**U R', &c. quod R. R. nuper de L. in Com' pred' Yeoman, decimo septimo die Martii, Anno Regni, &c. legitime conduct' & retent' fuit in servitio dicti Domini Regis per solutionem duorum solidorum secundum formam Statut' in hujusmodi casu edit' & provis. ad serviend' dictum Regem super terram versus inimicos dicti Dom' Regis sub conductione cujusdam W. R. Ducis & Capitanei sui & quod prefat' R. R. tricesimo die Martii, Anno supradicto apud H. in Com' predict' a Duce & Capitaneo suo predicto sine ejus licentia voluntarie & felonice recessit & seipsum retraxit a servitio predict' Dom' Reg' in malum & perniciosum exemplum aliorum in hujusmodi casu delinquent' & contra formam Statut' pred' necnon contra pacem dict' Dom' Reg' Cozon' & Dignitat' suas.

Squibs.

THE People having got a foolish Custom of throwing Squibs during the Time of any Publick Solemnity, and some having lost their Eyes thereby, and other Damages being done; a Law was made, prohibiting the Making, Selling, or Offering or Exposing to Sale, any Squibs, &c. or Fire-works, or any Cases, Moulds, or Implements for making Squibs, &c. and prohibiting Persons to suffer any Squibs, &c. to be cast out of their Houses, or out of or from any Part thereof, into any publick Street; and likewise, That no Person shall throw or fire any Squib, &c. in or into any such Street or House.

Squibs. Stocks.

655

The Offence is declared to be a common Nuisance, and the Maker of the Squibs or Moulds, or Seller, &c. is to forfeit 5*l*.

But he must be first convicted thereof before one Justice, either by the Confession of the Party, or Oath of two Witnesses.

He that permits Squibs to be thrown out of his House, forfeits 20*s*. for every Offence, but is to be convicted as aforesaid.

These Forfeitures are to be levied by Warrant from the Justice before whom the Party was convicted, by Distress and Sale of Goods, one Moiety to the Poor of the Parish where the Offence was committed, the other to him who prosecutes to Conviction.

He that *throws or assists in throwing* or firing Squibs, &c. into any publick Street, forfeits 20*s*. to the Uses aforesaid; the Conviction is to be as above-mentioned; and if he doth not pay it immediately upon the Conviction to the Justice of Peace, &c. he may by Warrant commit the Offender to the House of Correction, there to be kept to Work without Bail for any Time, not exceeding a Month, unless he shall sooner pay the Forfeiture to the said Justice.

But Commissioners of the Ordnance, or any other Person authorized by them, may order Fire-works to be made and fired, &c. and so may the Artillery-Company in London, and the Militia of England, in the Exercise and Practice of Arms only.

If any Person is sued for putting the Act in Execution, and the Plaintiff is cast, the Defendant shall recover treble Costs.

Stocks.

Constables may only confine Delinquents in Stocks, they cannot commit to Prison; and the Persons following may be put in the Stocks.

Affrayers. — Striking a Constable.

Artificers. { Two Days and a Night, refusing to Work at Harvest.

Clothiers. { Imbezilling Goods, second Offence.

Workmen. {

Drunkards. — Six Hours, if not able to pay 5*s*.

Felony. — Suspected thereof.

Labourers. { Two Days and a Night, refusing Work in Harvest.

Rescuing

Rescuing out of Stocks.	} For Suspicion of Felony.
Silk-Throw- er.	{ Delivering Silk to one who imbezils it, if unable to make Satisfaction.
Sunday.	—Playing at any Sports, if he pay not 3 s. 4 d.
Surety of Peace.	{ He who is to give it, making Resistance.
Suspected Persons.	{ Watchman may put in Stocks.
Swearing.	—Stocks for two Hours, if he doth not pay 2 s.
Tipling.	{ Stocks for four Hours, if not able to pay the Penalty.

Lastly, Escaping out of the Stocks, is a Breach of Prison.

Striking in Westminster-Hall. See Sessions.

Suspicion.

Communis vox & fama, that such a Person did the Offence, is sufficient Cause of Suspicion; but then the Fact must be actually done, otherwise not.

In many Cases evident Proofs are not to be had, and therefore probable Presumptions are good Causes of Suspicion, and sufficient for a Justice to commit the Person suspected.

Presumptions are thus divided by my Lord Coke :

1. *Violenta*, which he tells us is *Plena probatio*.
2. *Probabilis*, which moveth a little.
3. *Levis*, which is of no Force.

Some Presumptions of the first Sort are so violent, that no Proof can be admitted to contradict them; as if a Man is taken with a bloody Knife upon a murdered Person, or flying from the dead Man, tho' no Body saw the Stroke actually given, yet there needs no further Proof.

When a Felony is committed, any Man may arrest suspicious Persons, and carry them before a Justice of Peace, who may commit them, or take a Recognizance to appear at the Assizes or Sessions.

Swans.

Swans.

Taking away or destroying their Eggs, the Offender being convicted, must be committed for a Year and a Day, and forfeits 10*l*.

To steal Swans, if kept in a Moat or private River, Felony ; like of young Cygnets. Co. 7. 27.

Swearing.

By the Statute of 21 *Jac. cap. 30.* the Punishment of one prophanely Swearing or Cursing, was 1*s.* to the Use of the Poor.

The Prosecution was to be within twenty Days after the Offence.

The Conviction by the Oath of two Witnesses before one Justice ; and this Penalty was to be levied by Warrant and Distress, &c. and if that was not to be had, then the Offender, being above 12 Years old, was to be put into the Stocks for three Hours ; and if under that Age, then he was to be whipt by the Constable, who was to have a Warrant from a Justice for that Purpose ; or by the Parent or Master, in the Presence of the Constable, if the Penalty was not paid.

But some Alterations was made of this Law by that of 6 & 7 *W.* for by this Law the Forfeiture of one Shilling is confined to Day-Labourers, Common Soldiers and Seamen ; but every other Person is to pay 2*s.* for each Oath or Curse.

And for the second Offence, double the Forfeiture ; and for the third Offence, three Times as much as the First ; and in Default of Distress, if the Offender be above 16 Years of Age, he shall be set in the Stocks for one Hour for a single Offence, and for more than one, (if convicted at the same Time) then two Hours.

If under sixteen and do not pay the Penalty, he shall be whipt by the Constable, by a Warrant from the Justice, or by the Parent, Guardian or Master, in Presence of the Constable.

The Prosecution must be within ten Days after the Offence.

And the Conviction before one Justice by the Oath of one Witness.

The Justice who omits his Duty forfeits 5*l.* a Moiety to the Informer, &c.

Swearing. Taxation.

This Act is to be read by Parsons in the Church the next Sunday after every Quarter-day yearly, or to forfeit 20s.

Justices must keep a Book wherein they must register these Convictions, and certify them to the Quarter-Sessions.

A Warrant to levy the Money for prophane Swearing.

To the Constable, &c.

6 & 7 W.
One Justice,
One Wit-
ness.
Ten Days.

Suffex, ff. **W** Hereas it was this present Day duly proved before me, That J. S. of, &c. did, on Friday the 19th Day of this Instant March, being then above sixteen Years of Age, prophanely offend, by swearing four Oaths in the Parish of H. in the said County, by Reason whereof he hath forfeited to the Use of the Poor of the said Parish two Shillings for every Time he did so offend: These are therefore to require you forthwith to levy the said Forfeiture, being in the Whole 8s. upon the Goods and Chattels of the said J. S. by Distress and Sale thereof; and that you pay the same, when levied, to the Churchwardens or Overseers of the Poor of the said Parish of H. where the aforesaid Offence was committed, for the Use of the Poor of the said Parish: And if no Distress can be taken as aforesaid, and in Case the said J. S. shall not pay the said Forfeiture, or give Security for the same, that then you do set him in the Stocks, there to remain by the Space of two Hours. Given, &c.

Taxation.

Under this Head, these Rules are to be observed:

1. 'Tis not the Quantity, but the yearly Value of Land that must be taxed.
2. If a Man useth Lands in several Parishes, he shall be charged in every Parish proportionably to the yearly Value of the Land in each Parish.
3. The Farmer and not the Landlord, must be charged, neither ought he to be rated for the Rent reserved.

A Man may be rated as well for Goods as Lands, but not for both.

The Charges must be on the Person, and in the Place where the Goods are at the Time of the Assessment.

Taylors.

ALL Agreements made, or to be made, by or between any Persons exercising the Art of a Taylor, or Journeyman Taylor *within the Bills of Mortality*, for advancing their Wages, or for lessening their usual Hours of Work, are illegal and void; and every Person so offending, and being convicted thereof by the Oath of one or more Witnesses before two Justices, upon any Information exhibited against him, and Prosecution within three Months after the Offence, such Offender shall by the Order of the said Justices be committed to the House of Correction, there to be kept at hard Labour not exceeding two Months, or to the common Gaol as they shall see Cause, there to remain without Bail, for any Time not exceeding two Months.

The Hours of Work of Persons employed as Taylors, shall be from 6 in the Morning till 8 at Night, excepting an Hour for Breakfast, and an Hour for Dinner; and from the 25th of *March*, to the 24th of *June*, his Wages shall be not exceeding two Shillings *per Diem*, and for the Rest of the Year not exceeding 1 s. 6 d. *per Diem*.

Two Justices upon Complaint made to them for Non-payment of the said Wages, may summon the Offender, or issue their Warrant to levy the same by Distress, and for want of Distress, may commit him without Bail till he hath made Satisfaction.

The Sessions within the Limits aforesaid, may alter the Wages and Hours of Work.

Any Person retained as a Servant to a Taylor within the Limits, and departing before the End of his Time, or before his Work is done, or being not retained, shall refuse to be employed (after Request made by any Taylor for the Wages and Hours limited) unless for some reasonable Excuse to be allowed by two Justices of Peace, he shall being lawfully convicted, &c. be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding two Months.

Any Taylor giving greater Wages, and being convicted thereof upon a Prosecution within three Months after the Offence, shall forfeit *5 l.* one Moiety to the Informer, the other to the Poor, and he who takes more Wages, shall be sent to the House of Correction, and kept to hard Labour not exceeding two Months.

There lies an Appeal to the Sessions giving six Days Notice.

Thames.

THE Justices of Peace in *Berks, Bucks, Gloucester, Oxford* and *Wiltshire*, shall be Commissioners in their respective Counties for putting in Execution the Act of 6 & 7 *W. cap. 6.*

They or five of them may make Orders at their Quarter-Sessions, to settle the Rates and Prices, which the Owners of Barges, Boats and Vessels, must take.

And which the Tenants of *Locks, Weirs, Bucks, Winches, Turnpikes, Dams*, or other Engines, ought to take.

The Rates for Carriage in such Boats must be assessed in their Quarter-Sessions after *Easter* yearly: They must give Notice thereof in Writing to every Mayor or Head-Officer in every Market-Town, &c.

Owner of a Barge, &c. taking above the said Rates for Water-Carriage, or any Person breaking the Rules or Orders made by the Justices, forfeits for every Offence to the Party grieved 5 *l.*

And must pay double Costs of Suit: This Forfeiture is to be recovered in any Court of Record at *Westminster*.

Such Rules and Orders (except for Water-Carriage) must be written in Parchment, and signed by five Commissioners, and then are to continue in Force for seven Years, and from thence till some new Rules are made.

But if any Person is aggrieved by any such Rules, upon Complaint to the Judge of Assize within one Year, he may confirm, vacate, or alter the same.

Barge-Master shall be answerable for Damages done by his Barge or Men.

Theftboot. See Disposition of Felony.

Threatning.

TO hurt another in his Body, by Beating, Wounding, &c. the Party grieved may desire Surety of the Peace.

It has been doubted, whether such Surety ought to be where a Person threatens to burn a House or Goods; but I can see no Reason for this Doubt.

Tiles.

EArth for Tiles shall be cast up before the first of *November*, ¹⁷E.4. c. 4. and must be stirred and turned before the first of *February*, and not made into Tile before the first of *March*, or lose double the Value to the Buyer.

A plain Tile offered to Sale, is to be ten Inches and one half long, and six Inches and a Quarter in Breadth, and three Quarters of an Inch thick.

Roof-Tile must be thirteen Inches in Length, three Quarters of an Inch Thick, and of convenient Deepness.

Gutter and Corner-Tile must be ten Inches and a half Long, and of convenient Thickness, Breadth and Deepness.

Tile otherwise made, forfeits double the Value to the Buyer, to be recovered by Action of Debt, &c.

But the Defaults shall be heard and determined by the Justices, and the Offenders fined after the Rate of 5 s. per Thousand of plain Tile, 6 s. 8 d. per Hundred for Roof-Tile, and 2 s. per Hundred for Corner or Gutter-Tile.

Justices shall appoint Searchers for Tile, who shall execute the Office, or forfeit to the King 10 s.

Tithes.

I Shall be a little large in this Title ; and tho' in Matters which do not concern the Office of a Justice of Peace, yet I am of Opinion, what follows is necessary to be known by them and others.

The Maintenance of the Parochial Clergy arises,

1. Out of the Glebe, which also takes in the House.
2. By Oblations.
3. By Tithes.

1. the *Glebe* was the original Endowment of the Church, and it was always settled before the Building, and was to be a Maintenance for those who attended the Service, when built.

The Right of Presentation by private Persons was founded on this Endowment, and the *Advowson* was never in Gross originally, but always appendant to Manors, because the Right of Patronage was derived out of the Endowment which issued out of Manors.

The Learned Bishop of *Worcester* tells us, how the Words *Advowson* and *Patronage* came to be used amongst us in this Sense, viz. By the Canon Law, great Churches are allowed to have *Advocates* to solicit their Causes at Court: Afterwards, the Kings of *England* appointed such *Advocates* to great Monasteries, and this was an Honorary Title in those Days; and then in Time, those who built Parochial Churches came to be called *Advocates* or Patrons of them, from whom the Right of Presentation is called the Right of *Patronage*, or *Jus Advocationis*, which Right their Heirs were bound to defend, because the Care of such Churches was devolved on them by the Death of their Ancestors.

2. *Oblations*: These were so large in the Primitive Times, that Persons did build Churches on their Lands on Purpose to have an equal Part of the Oblations with the Clergy; there was no Need then of any established Law to supply their Necessities, because of that great Liberality of the People: But this was usually in great Towns and Cities, and the Clergy had an ample Provision in such Places out of the *Common Stock* in Lieu of Tithes, and this was called *Sportulation*.

* At Maf-
con in
France.

But when Christianity spread into the Countries, then there was a Necessity for a fixed Maintenance of the Clergy; and a * Canon was made, anno 585, for Payment of Tithes, as founded on the Law of God, and the ancient Custom of the Church, the Payment whereof had been *disused* by Reason of these voluntary Oblations.

We find these *Oblations* were made not only by the Living, but at the Death of the People, in the Time of our *Saxon* Ancestors; and this was then called *Symbolum Animæ*, or the *Saxon* Soul-shot; and the Church, to which the Deceased did belong as Member thereof, claimed this Duty.

Some are of Opinion, that this was the Original of *Mortuaries*, only altering the Thing given, viz. by turning Money into Goods; and therefore when *Glanville* wrote, a Freeholder was allowed to make a *Will*, so as he gave the best Thing he had to the *Lord Paramount*, and the next best to the *Church*.

But 'tis now generally held, That *Mortuaries* are not due of common Right, but only by Custom, as a Recompence for Tithes substracted, and Oblations not duly paid, and other Parochial Duties neglected by the Parry in his Life-time. These Oblations being only discretionary, did afterwards sink so low, that without the great and legal Support of Tithes, the Clergy could not be maintained.

3. *Tithes*: These are said to be Ecclesiastical Inheritances, collateral to the Estate in the Land out of which they arise, and are of their own Nature due only to Spiritual Persons.

These are due not only of common Right, but are enjoined by particular Laws, both before and since the Conquest, by which

which Laws they are to be determined as well as the other nine Parts.

And the Owner of the Soil can claim no manner of Right to them; for if he hath the Land by Descent, he can have no Title to the Tithes, because his Ancestors had none; if he has it by Purchase, he never paid for them, because they are set aside in the Valuation of the Land sold.

Now if we consider the Nature of Payment of Tithes, we shall find some General Rules relating to it, but not without some Exceptions.

1st Rule: That Tithes are to be paid only of Things which *Annually* increase, *Simul & Semel*.

But this Rule is to be understood where there is no Custom to the contrary, for in such Case they are to be paid for *Coal, Chalk, Lead, Slate, Stone, Tin, Turf*, which do not yearly increase.

As for Houses, a customary Duty, or *Modus decimandi*, hath been anciently allowed in lieu of Tithes; but such a Prescription has likewise been denied, because a *Modus* is only payable for the Increase of Things.

The Payment according to the Rule before-mentioned, being to be only *semel in Anno*, then there can be no Tithes due for After-pasture where Tithe-Hay hath been paid in the same Year; but Custom likewise prevails in that Case.

2d Rule: Things which are *fera Natura*, are not titheable, because a Man hath no Property in such: But *Pidgeons, Rabbits, Bees, &c.* cannot properly be said to be *fera Natura*, because they are in Custody in particular Places set apart for those Purposes, and when they go out, 'tis still *Animo revertendi*.

'Tis not worth disputing, whether Tithes are due of common Right for such Things, but they are certainly due by Custom; and so likewise of *Fish*.

Tithes being therefore enjoined by the Laws of the Land, must be recovered by the Help of those Laws when unjustly detained; but in many Cases *Exemptions* are allowed.

1. By Appropriations.
2. By Privileges of certain Orders.
3. By Prescription, or real Composition.
4. By Unity of Possession.

1. By *Appropriations*, which is the Giving particular Churches with their Tithes to Ecclesiastical Persons, as to Monasteries, Priories, &c. for the better Maintenance of Hospitality: These are now become Lay-Inheritances since the Statute of Dissolutions; but in such Case, the Impropiator is to find a Vicar to serve the Cure.

'Tis agreed by Learned Men, That the Parochial Right of Tithes was settled here by the *Saxons*, but very much neglected afterwards by the *Normans*, who possessed themselves of those Manors and Lands out of which Tithes were issuing, and built Monasteries and Abbeys, and appropriated the Tithes to them.

By this Means the poor Clergy were reduced to a low Condition again; but even in those Cases, the Bishop was to take Care not to admit a *Vicar* presented by the *Monks* to serve the Cure where the Tithes were appropriated to them, unless they would consent to a sufficient Allowance for his Support.

The Sum was at first left to the Discretion of the Bishops, but they being remiss in those Days in this Matter, it came afterwards to be particularly mentioned in the Decretals, and to be enjoined by the * Statutes of Appropriations, viz. That in every appropriate Church, a Secular Person be *Vicar*; for before that Statute of 4 H. 4. the *Monks* presented a Regular one of their own Order, and still kept the Tithes; but by this latter Statute he was to be a Secular Person, and not only canonically instituted and inducted, but conveniently endowed, (but it was at the Discretion of the Ordinary) or the *Appropriation* was to be void.

These *Appropriations* being personal, were in their very Nature to endure no longer than the Bodies to which they were united, and therefore upon their Dissolution they were vested in the Crown.

31 H. 8. 'Tis true, this Power of the Bishops is not mentioned in the Statute of Dissolutions, but yet 'tis not taken away from them by that Statute; for the King had the Monasteries and Tithes in as large a Manner as the Abbots had them before the Statute, and there is a *Saving to the Rights* of all Persons, &c. Now this being an antecedent *Right* in the Bishops to make an Allowance to the *Vicar*, it must be therefore saved. And this appears by some Resolutions in Law: A *Vicar* libelled, for that the Church was appropriated, and he had not a sufficient Maintenance; and a Prohibition was prayed, but denied, because the Bishop might compel the Impropiator to enlarge it. 1 Roll. 337.

This *Endowment of Vicaridges* is usually of small Tithes; yet the *Vicar* may prescribe for Tithes not mentioned in the Endowment, because the Ordinary hath Power to increase his Allowance.

2. *Exemption*: This is by Privileges of particular Orders: 'Tis true most Orders of *Monks* were at first exempted from Payment of Tithes; but in Time this was restrained to three Orders:

Viz. to { *Cisterrians.*
Hospitallers.
Templers: Dissolved by the Statute of 17 Ed. 2. and their Possessions given to the *Hospitallers*.

But

But these Privileges had certain Limitations:

1. It must relate to Lands in their Possession, before the Council of * *Lateran*; for if given to them afterwards, such Lands had not this Privilege. * 17 Johan. Anno 1215.

So that, tho' at the Time of the Dissolution those Lands were discharged of Tithes; yet that must be intended of a legal Discharge, because Lands given since that Council were not capable of such Discharge.

2. Where there was an *ancient Composition*, Lands were not discharged by this Privilege, but the *Composition* was still paid, and the Rectors and Vicars who were able, did contest this Matter with the Monks, and prevailed.

These being personal Privileges united to particular Orders, it must necessarily follow, that when these Orders were dissolved, the Privileges were extinct, unless continued by these Acts which dissolved them.

But this was not done by the Statute of 27 H. 8. by which all the little Monasteries and Priories under † Value, were dissolved; so that this Privilege doth not prevail where the dissolved Monasteries, &c. were under Value, because there is no Provision in that Act to exempt their Lands from Payment of Tithes. † 200 l. per Annum.

And therefore Care was taken * four Years afterwards, where * 31 H. 8. the great Monasteries were dissolved, that the King should hold their Lands discharged of Tithes, as the Abbots had done before the Dissolution.

3. *Exemption*: This is by *Prescription* and *ancient Composition*: As to *Compositions real*, the Canonists say, *Non valet Consuetudo ut minus quam decima solvatur*; but they allow it to be good where less is paid, in Cases by Personal Tithes, which arise out of the Profits by the Labour and Industry of Men; but I can see no Reason why it should not be so in mixt and predial Tithes, which arise in the one Case partly by Industry, and out of the Ground, as Milk, Cheese, &c. and the other only out of the Ground; as Fruits, Corn, Hay, &c.

These *Compositions* are usually entred in the Bishop's Register, and were at first made for a valuable Consideration; but since that Time the Price of Things is much advanced, so that tho' now such *Compositions* bear no Proportion to the real Value of the Tithes, yet Custom doth prevail; and from hence arises what we call a *Modus decimandi*.

But now since the Statute of 13 El. ca. 10. a real *Composition*, tho' made by the concurrent Consent of Parson, Patron and Ordinary, shall not bind the Successor; because by that Statute all Grants which are binding are restrained to twenty-one Years, or three Lives.

But

But as to *Prescription*, 'tis not allowed in *Lay-Persons in non decimando*, because none but Spiritual People are capable of having Tithes.

'Tis true, this is allowed to them in *Modo decimandi*, but with some Limitations, *viz.* it must be immemorial and reasonable; that is, there must be some Recompence for the Parson, and it must be something which is certain and durable; for if otherwise, it shews an Original Deficiency in the Custom, and therefore 'tis void.

4. *Exemption. Unity of Possession*, that is, where Lands which were formerly titheable, were united by *Appropriation*, or otherwise, to some Monastery or Priory; by this Means they were discharged of Tithes.

But this is more properly a Suspension than a Discharge, because in such Case they cannot in Reason be said to pay Tithes to themselves.

There are likewise some Restrictions in this Matter.

This Unity must be just, and not obtained by Wrong.

It must be equal, that is the Abbot must have an equal Estate of Inheritance, both in the Land and in the Tithes; the one is in his Temporal, and the other in his Spiritual Capacity.

It ought to be perpetual; that is, Time out of Memory.

It ought to be *Libera*; that is, discharged at the Time of the Dissolution, and then in the Possession of the Abbot; for it was in Lease, and their Farmers have paid Tithes to them, the Unity will serve.

In that King's Reign a Statute was made to enforce the Execution of a Sentence of an Ecclesiastical Judge for Tithes, *viz.* Two Justices might commit him who refused to obey the Sentence, upon Complaint to them in Writing from such Judge. 27 H. 8. cap. 20.

Quaker.
7 & 8 W.
cap. 34.
To contri-
bute for se-
ven Years.
1 G. c. 7.
made per-
petual, and
extend to
any Tithes
or Church-
Rates, and
order Costs,
not exceed-
ing 10s.

A *Quaker* refusing to pay or compound for his great or small Tithes, or to pay Church-Rates, may upon Complaint be summoned before the two next Justices (other than such Justice who is Patron of the Church, or any wise interested in the Tithes) who may examine upon Oath the Truth and Justice of the Complaint, and ascertain what is due to the Person complaining; and if it is under 10*l.* they may by an Order under their Hands and Seals direct the Payment.

And if such *Quaker* refuse to pay, &c. one of the said Justices may, by Warrant under his Hand and Seal, levy the Money by Distress, &c.

If the *Quaker* finds himself aggrieved, he may appeal to the next Quarter-Sessions; and in such Case no Warrant for Distress shall be granted till the Appeal is determined.

If the Sessions upon the Appeal continue the Judgment, they may give Costs against the Appellant, to be levied by Distress, &c.

No *Certiorari* to be allowed, unless the Title comes in Question. There

There is likewise an easy and expeditious Way for all other Persons to recover small Tithes, &c. under 40 s. per Ann. The Person to whom 'tis due, may in twenty Days after Demand, and within two Years after it became due, complain in Writing to two Justices, neither of them Patron of the Church, or interested in the Tithes.

These two Justices may summon the Party by a Writing under their Hands and Seals to appear before them, &c. and after Appearance, or in Default thereof, (if the Service of the Summons is proved on Oath) they may hear the Complaint by Witnesses upon Oath, and may make a Judgment under their Hands and Seals, by making an Allowance for the Tithes, and give Costs not exceeding 10 s.

This Judgment must be enrolled by the Complainant at the next Sessions, for which he is to pay 1 s. and this Enrollment, and Satisfaction made, shall be conclusive for any other Remedy for the same Tithes.

If the Party neglect or refuse to pay the Money so adjudged, in ten Days after Notice, the Constable and Headborough may levy it by Warrant of the said Justices by Distress and Sale of the Goods of the Offender, which must be paid to the Person complaining; and the Officers may retain such Charges for making the Distress, and for detaining it three Days (for they cannot sell it before) as the Judges shall think fit.

The Party grieved may appeal to the next Sessions, whose Judgment shall be final, and they may reverse the Judgment of the two Justices; but if they confirm it, they may give Costs against the Appellant, to be levied by Distress, &c.

If the Defendant removes out of the County, City, &c. after Judgment had, and before the Sum is levied; one of the two Justices who gave the Judgment, may certify it under his Hand and Seal to any other Justice of that Place where the Defendant shall live; which Justice shall cause the Money to be levied by Distress, &c.

'Tis further enacted, That no such Judgment shall be removed or superseded by *Certiorari*, unless the Title of the Tithes come in Question.

But if the Party against whom the Complaint is made, insist on a *Modus*, and deliver the same under his Hand to the Justices, then he giving the Complainant such Security as the Justices shall think fit, to pay the Costs and Damages, which upon a Trial at Law shall be given against him, the Justices shall not proceed, but the Complainant must sue for his Tithes in the Courts above.

Tithes.

The Summons.

To A. B. of, &c.

WHereas Complaint hath been made before us, two of his Majesty's Justices of the Peace for the County of Suffex, That you the said A. B. have refused to pay unto A. C. Vicar of the Parish of H. the small Tithes due to him from you, as by Law you ought: These are therefore to require you to appear before us at the Sign of, &c. on Wednesday the 24th Day of March, to be examined concerning the Premises. Given under our Hands and Seals, &c.

The Order.

To A. B. of the Parish, &c.

Two Ju-
stices.
Quaker.

WHereas Complaint hath been made unto us, two of his Majesty's Justices of the Peace for the County of Suffex, That A. B. being a Person commonly called a Quaker, hath refused to pay or compound for his small Tithes arising in the Parish of H. and we having summoned the said A. B. before us, and having duly examined the Truth and Justice of the said Complaint upon Oath, do find that there is justly due from the said A. B. to the Vicar of the said Parish, the Sum of 3 l. being the Value of the small Tithes for two Years last past: We therefore the aforesaid Justices, being neither of us Patron of the said Parish Church of H. or any ways interested in the said Tithes, do order and appoint the aforesaid A. B. to pay, or cause to be paid unto the said Vicar the aforesaid Sum of, &c. within ten Days after Notice of this our Order. Given, &c.

The Warrant to distrain in Case there is no Appeal.

To the Constable, &c.

One Justice Suffex, ff.

WHereas A. B. being a Person commonly called a Quaker, hath been summoned to appear before two of his Majesty's Justices of the Peace for this County, to be examined for Non payment of his small Tithes: And whereas the said Justices have ordered him to pay unto the Vicar of H. the Sum of 3 l. within ten Days after Notice of the said Order: And whereas it appeareth unto me R. B. Esq; one of the said Justices, that the said A. B. had due Notice of the said Order, but doth refuse to pay the said Sum of 3 l. These are therefore to require you forthwith to levy the aforesaid Sum of 3 l. by Distress and Sale of the Goods and Chattels of the said A. B. rendring to him the Overplus, if any shall happen to be. And hereof fail not. Given under my Hand and Seal, &c.

Tobacco.

Tobacco.

ANY Person cutting, or procuring to be cut, *Walnut-Tree-¹ G. c. 6* Leaves, *Hop-Leaves*, *Sycamore-Leaves*, or any other Leaves, Herbs, Plants or Materials, in Imitation of the usual Sizes which Tobacco hath been cut into for Sale, or colouring any such Leaves, &c. to make them resemble Tobacco, or selling the same mixed or unmixed with Tobacco, shall forfeit 5 s. for every Pound, and so in Proportion; one Moiety to the Crown (which is to be at the Charge of the Prosecution) the other Moiety to the Prosecutor; to be recovered, with full Costs, in any Court of Record at *Westminster*.

The like Penalty for *exporting* such Leaves, and the same and the Materials or Engines for cutting, colouring, &c. are forfeited, and may be seized by an Officer of the Customs, or other Person authorized by the Commissioners of the Treasury or Customs.

No House, &c. shall be opened to search for Leaves, &c. and Tools, but at seasonable Hours, and not without a Special Warrant from two Justices, where the Search is made, and that the Leaves, &c. which shall be found within the Limits of any Port, or within six Miles thereof, shall be brought to the next Custom-house, and if seized at a greater Distance, shall be secured by the Order of two Justices, at the King's Charge, till the Cause of Seizure be determined by the next Sessions; and after such Determination, the same shall be burnt or destroyed by an Order of Sessions at the King's Charge.

Servants and *Labourers*, employ'd in *Cutting*, *Colouring*, *Curing*, or *Manufacturing* any Leaves, &c. to resemble Tobacco, or in making such Mixture, or knowingly selling the same, and being convicted thereof by the Oath of one Witness, before two Justices, shall be committed to Gaol, or House of Correction, there to be kept to hard Labour, for any Time not exceeding six Months, without Bail.

Persons sued for doing any Thing in Execution of this Act, may plead the General Issue, and may give the Act and Special Matter in Evidence; and if he recover, shall have treble Costs.

Mixing or colouring Snuff with *Oker*, *Umber*, or any Colouring, except with Water tinged with *Venetian Red*; or mixing, or causing to be mixed with Snuff any *Fustick* or *yellow Ebony*, *Touchwood*, or any other Wood, Dust, Sand, or Tobacco-Dust; or knowingly selling, or exposing to Sale, such mixed or coloured Snuff, forfeits 3 l. for every Pound of Snuff, and all the Snuff; one Moiety to the Crown, the other to the Informer, or to him who shall seize or sue for the same; to be recovered in a Court of Record.

A Wat-

A Warrant to commit a Servant or Labourer for cutting Leaves to resemble Tobacco.

To the Constable of, &c. and to the Keeper of the Common Gaol at, &c.

1 G. c. 46. Middl' ff. **W** Hereas T. B. of, &c. hath on the Day of the Date hereof been duly convicted before G. D. and R. W. Esqrs, two of his Majesty's Justices of the Peace for the said County, by the Oath of R. W. of, &c. that he the said T. B. was on the 7th Day of August last employ'd as a Servant in * cutting Walnut-tree-Leaves in Imitation of the usual Sizes which Tobacco has been cut into, contrary to the Law in that Case made and provided: We do therefore require you, or one of you, forthwith to convey the said T. B. to the Common Gaol at L. in the County aforesaid, and to deliver him to the Keeper thereof: And we do hereby command the said Keeper to receive the said T. B. into his Custody, and to keep him in the said Gaol to hard Labour for three Months without Bail; and for your so doing, this shall be your Warrant, &c.

Two Ju-
stices.
One Wit-
ness.
* Or cut-
ting any
Leaves, or
colouring
them, or
mixing
them with
Tobacco,
or know-
ingly sel-
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the Case is.

Toll.

T H I S relates either to } Markets and Fairs;
or
Millers.

As to Markets; the Owner thereof, if he hath the Toll, must have a Brass Measure chained in the Market-Place, or he forfeits 5 l. per Stat. 22 Car. 2.

And as for Horses sold in Markets; if the Toll-taker doth not know the Seller, he must bring a Voucher who knoweth him; and if such Voucher giveth false Testimony to the Toll-taker, he forfeits 5 l.

Or if a Thief steals an Horse, and enters it by a wrong Name, the Sale is void. 31 Eliz. cap. 12.

By the Statute 2 & 3 Ph. & M. cap. 4. the Toll-taker must rake but 1 d. for the Toll of an Horse, and entering the Party's Name, Mystery and Dwelling, and Price of the Horse.

And if he refuse to give the Buyer a true Note of the Entry, paying 2 d. he forfeits 5 l. per Statute 31 Eliz. cap. 12.

As to Millers, if they take Toll by heaped Measure, they are to be grievously fined. 31 Ed. 1. De Pistoribus.

And

And by another Statute, viz. 51 H. 3. cap. 3. if they take more than the 24th Part of the hard Corn, or by a Toll-dish, which doth not agree with the King's Measure, or otherwise than by Strike, they shall be grievously amerced.

And they shall have no more than three Pints of a Bushel of Corn, and one Pint of a Bushel of Malt, if brought to the Mill.

Trade.

DEBT upon the Statute of 5 Eliz. cap. 4. may be brought in the Courts at *Westminster*; but an Indictment upon that Statute for using a Trade, not being an Apprentice to it for seven Years, may be tried at the Quarter-Sessions.

Some Judges, and particularly Justice *Twysden*, was always of Opinion, That this Statute ought not to extend to Traders in Country Villages, but only to such in Market-Towns who had not served their Apprenticeship, and yet used Trades in those Towns.

But others have thought, that such a Construction would be very prejudicial to Corporations.

At Common Law, before the Making this Statute, any Man might use what Trade he pleased, though he had not been an Apprentice to it; and if he did it unskilfully, the Party damned might have an Action on the Case; which, together with the Loss of his Trade, (for that must be the Consequence where Skill is wanting) was held a sufficient Punishment; and therefore this Statute has not been much favour'd by some Lawyers, nor extended farther than it ought.

An Indictment for using a Trade, not being an Apprentice.

Suffex, ff. **J**UR', &c. quod W. B. nuper de L. in Com' pzed' Indictment
 Yeoman, 24 die Martii, Anno Regni, &c. & con' for using
 tinue postea usque diem captionis hujus inquit the Trade
 tionis scilicet vicesimum quartum diem Junii, Anno Regni, of a Salef-
 &c. secundo supradicto (erissen' per spatium trium mensium man, and
 integrozum) apud L. pzed' in Com' pzed' illicite pro lucro held to be
 suo proprio usus fuit exercuit & occupabit Artem, Mysterio, Statute.
 rium sive manual' Occupation' Distozis, (Anglice, a Baker) Raym 385.
 erissen' Arte, Mysterio sive manual' Occupation' infra hoc
 Regnum Angliæ, duodecimo die Januarii, Anno Regni Domi-
 ne Elizabethæ nuper Regine Angliæ, &c. quinto usitat' & ap-
 probat' ubi rebera idem W. B. eodem duodecimo die Januarii,
 Anno Regni dicte Domine Elizabethæ nuper Regine Angliæ,
 &c. quinto supradicto non usus fuit aut exercuit legitime
 pzed'

pred' Artem, Myſterium ſive manual' Occupation' Piſtoris
 pred' nec aliquam aliam Artem, Myſterium ſive manual' Oc-
 cupation' nec unquam poſtea educat' fuit in pred' Arte, My-
 ſterio ſive manual' Occupatione Piſtoris pred' per ſpatium
 ſeptem Annozum tanquam Apprentic' (Anglice, an Apprentice)
 contra formam Stat' in huiusmodi Caſu edit' & proviſ. nec
 non contra Pacem dicte Domine Regine nunc Cozon' & Dig-
 nitat' ſuas, &c.

Transportation. See Deer-stealing and Felony.

CORN may be transported when 'tis at the Prices follow-
 ing, or under, if not prohibited by Proclamation.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
Wheat per Quarter.	Per 1 Fac. c. 25.	21 Fac. cap. 28.	—01	06	08
	Per 3 Car. cap. 4.	—	—01	12	00
	Per 1 Will.	—	—02	08	00
Barley per Quarter.	Per 1 Fac. cap. 25.	21 Fac. cap. 28.	—00	14	00
	Per 3 Car. cap. 4.	—	—00	16	00
	Per 1 Will.	—	—01	04	00
Beans per Qr.	Per 3 Car. cap. 4.	—	—01	00	00
Malt per Qr.	Per 1 Will.	—	—01	04	00
Oats per Qr.	Per 1 Fac. cap. 25.	21 Fac. cap. 28.	00	14	00
Pease per Qr.	Per 3 Car. cap. 4.	—	01	00	00
Rye per Qr.	Per 1 Fac. cap. 25.	21 Fac. cap. 28.	—00	15	00
	Per 3 Car. cap. 4.	—	—01	00	00
	Per 1 Will.	—	—01	12	00

And by the Statute of 1 Will. it is enacted, That Corn to be transported must be shipped in *English* Vessels, the Master and two Thirds of his Seamen being the King's Subjects.

A Certificate under the Merchant's Hand must be brought to the Collector of the Customs, &c. in any Port, both of the Quantity and Quality of the Corn shipped.

This Certificate must be proved before the Collector, &c. upon Oath, which he is impower'd to administer.

The Merchant, or other Person, must give Bond in the Sum of 200 *l.* for every Tun of Corn shipped, and so proportionably; the Condition thereof must be, that it shall be transported beyond Sea, (Dangers of the Sea excepted) and not landed in *England*.

And then the Merchant shall receive of the Collector upon Demand, viz.

For

Travelling beyond Sea.

673

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every Quarter of Barley or Malt ———	00	02	06
For every Quarter of Rye ———	00	03	06
For every Quarter of Wheat ———	00	05	00

And the Chief Magistrate of the Place beyond the Seas where the Corn was landed, certifying it under the Common Seal, or two *English* Merchants there, under their Hands and Seals; and this Certificate being brought to the Person who took the Bond, he shall forthwith deliver it to be cancelled without any Fee.

This Money paid by the Collector shall be accepted in his Accounts as so much paid to the King.

Any Person of the Age of 15 Years, and under 21 Years old, ^{4 G. c. 11.} willing to be transported and to enter into any Service in the King's Plantations in *America*, any Person may contract with him for such Service, not exceeding eight Years, so as such Person so binding himself come before two Justices of the Peace where the Contract was made, and acknowledge his Consent and sign the Contract in their Presence, and with their Approbation; which said Contract and their Approbation thereof, must be certified by them at the next General Sessions, to be registered by the Clerk of the Peace without Fee.

Travelling beyond Sea.

THE Officers of Ports, or Owners of Vessels, suffering Women or Children, *under Age*, to go or carry them beyond Sea, without the Licence of the King, or six of the Privy Council, under their Hands, forfeit their Office and all their Goods; and the Master of the Vessel forfeits his Vessel and all his Goods, and must be committed without Bail for twelve Months.

Any Subject going beyond Sea to serve any *Foreign Prince*, if he doth not take the Oath of Allegiance before the Controller or Customer of the Port, or his or their Deputy, is a Felon.

He who administers the Oath must register it, and certify it into the Exchequer once every Year, or forfeits 4 *l.* for every Oath not certified.

And a Gentleman, or one of a higher Degree, going beyond Sea to serve as aforesaid, must be bound with two Sureties in 20 *l.* to the King, not to be reconciled to the Pope, nor to practice any Thing against the King, but to reveal what he shall know against him: The Controller or the Customer of

X x

the

Treason.

the Port must see that the Person enters into such Bond, and must register it and certify it into the Exchequer once every Year, or forfeits 5 *l.* for every Default.

Children going beyond Sea without Licence as aforesaid, shall take no Benefit by Descent, until they, being 18 Years old, take the Oath of Allegiance before one Justice of the County where the Parents dwell or dwelt; and in the mean Time the next of Kin, being no Recusant, shall enjoy it till he conforms to take the Oath of Allegiance, and to receive the Sacrament, and then to account to him for the Mesne Profits, and in reasonable Time to pay the same.

He who sends Children beyond Sea loseth 100 *l.* one third Part to the King, another to him who sues, another to the Poor. 3 *Jac. c. 5.*

Traverles. See Indictments.

Treason.

THIS is a Crime of so transcendent a Nature, that it hath not yet been defined; it is *malum in se*, and therefore an Offence at Common Law, before the Statute of 25 *Ed. 3.*

'Tis true, before that Statute, the Judges did usually determine what Treason was, which made it somewhat incertain; but since that Time it hath been generally reduced under six Kinds; and though more Treasons were introduced by many subsequent Laws, yet that old Statute of 1 *Ed. 3.* was reinforced by 1 *Maria 1.* so that all made between these two Laws are abrogated, and the Statute of 25 *Ed. 3.* is the Standard at this Day.

The six Kinds of Treason are these:

- | | | |
|----------------|---|---|
| I. Death. | } | 1. By Compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt Act. |
| | | 2. By killing the Chancellor, Treasurer, Justices of either Bench, or of Assize, Oyer and Terminer, in the Administration of Justice. |
| II. Violation. | } | To violate or carnally know the Queen, the King's Eldest Daughter unmarried, the Prince's Wife. |
| III. ——— | | Levying War. |
| IV. ——— | | Adhering to the King's Enemies. |
| V. ——— | } | Counterfeiting the Great Seal, the Privy Seal, the King's Coin. |
| | | |

VI. By

VI. ——— { By bringing counterfeit Money into *England* like the King's Coin.

Any open Act manifesting a Design to depose or imprison the King, is a sufficient Declaration of compassing or imagining, &c. as providing Arms to effect it, sending Letters to incite wicked Persons to attempt it, writing to foreign Princes to invade the Kingdom, assembling the People to take the King into their Custody: These, and such like, are Overt-Acts to make one guilty of High Treason within this Branch of the Statute, especially if there is any Proof of Words signifying to what Purpose such Acts were done.

And even Words themselves may be laid as an Overt-Act of Treason, for 'tis the natural Way to express our wicked Intentions; and this was * *Crobagan's Case*, who being beyond Sea, said, *I will kill the King if I can come at him.* This Person afterwards came into *England*, and was indicted for Compassing the King's Death, and these Words were laid as an Overt-Act, and being proved, he was convicted of High Treason. 'Tis true my Lord *Coke* was of a contrary Opinion in his *Pleas of the Crown*. fol. 14. but in the Case of the Regicides, that Opinion was denied to be Law, *Keil*. 13. However he agreed, That Words set down in Writing may be an Overt-Act to prove the Compassing of the King's Death.

And this was *William's Case*, who wrote a Book called *Speculum Regale*, wherein he foretold the King's Death. 2 *Roll*. 88.

So to say, the King, being excommunicate by the Pope, may be deposed and killed. *Owen's Case*, 13 *Fac*.

† So is the Printing any treasonable Positions.

So is the Gathering Men together to compel the King to comply with their Demands, or to remove Evil Counsellors, or to conspire with a Foreign Prince to invade the Kingdom. *Kelynge* 21.

But a Man *Non compos Mentis*, cannot be guilty within this Branch, &c. because he is deprived of his Reason, but he may be guilty by attempting any Violence upon the Person of the King, &c.

This Overt-Act must be alledged and proved in every Indictment, &c.

And because a Civil War, and the Destruction of the People, are the natural Consequences hereof, therefore this was Treason at Common Law.

A King before his Coronation, a King *de facto*, is a King within this Act; but the Husband of the Queen Regent, or the Right Heir to the Crown, not in Possession, is not so.

She must be absolutely so, and not a Dowager.

The second Son after the Death of the Eldest, the Eldest Son of the Queen *Regnant*, but the Collateral Heir apparent is Prince, not within the Statute.

(2.) By
violating
the Queen.

This doth not extend to a Dowager ; if the Queen consents, 'tis Treason in her ; but there must be some open Act to manifest it, which must appear by plain and not conjectural Proof, and the Offender must likewise be attainted in his Life-time, for if he die before Conviction, he cannot be attainted but by Parliament.

This Offence was likewise High Treason before this Statute, because it utterly destroyed the Certainty of the King's Issue, and by Consequence raised Contention about the Succession.

(3.) By le-
vying War.

A Conspiracy, or compassing to levy War, is no Overt-Act, unless a War is actually levied ; this appears by the Statute of 13 *Eliz. cap. 1.* which made such Conspiracy Treason during the Life of that Queen ; but if a War is levied, then the Conspirators are all Traitors, though not actually in Arms.

And yet the Meeting and Consulting to levy War, tho' no War is actually levied, will be a sufficient Overt-Act to prove the Compassing and Imagining the Death of the King.

Co. Pl.
Cor. 14.

'Tis true, there is an Opinion in my Lord *Coke's Pleas of the Crown* to the Contrary ; but that Opinion has been denied to be Law.

Now if a Meeting and Consulting to levy War, tho' no War is afterwards levied, shall be a sufficient Overt-Act to prove the Compassing the King's Death ; *a fortiori* 'tis so where War is actually levied. *Kelynge* 20.

Raising Forces for any publick End or Purpose, is Treason ; this was the Case of *Cotton*, and other *London* Apprentices, who assembled to pull down Bawdy-houses ; they chose Captains amongst themselves, and marched in a Posture of War ; they wounded the Constable, and opposed the Guards : All which was found specially at the *Old-Bayly*, and upon Consideration of the Fact, some of them were executed. *Sid.* 388.

2 And. 67.

Several conspired in *Oxfordshire* to pull down Enclosures, and to go to the Lord *Norris's* House for Armour, Horses, &c. and from thence to *London*, and to join with more ; this was held Treason.

Dyer 98. B.

Two or more conspired to levy War, and one of them afterwards actually raised Forces ; this was held Treason in all, by the Opinion of all the Judges in Sir *Nich. Throgmorton's* Case, who conspired with *Wyat*.

Some *London* Apprentices were committed for a Riot, and some other Apprentices conspired to release them, and to kill the Lord Mayor, and to provide themselves of Armour, by breaking open two Houses near the *Tower* ; they had a Trumpet, and a Cloak on a Pole instead of a Flag, and were going towards the Lord Mayor's House ; but were opposed by the Sheriffs, whom they resisted ; and this was held Treason, by levying War, and within the Statute of 13 *Eliz.*

(4.) What
adhering
to the K's
Enemies.

By aiding or comforting them, by surrendring any Fort or Castle to them for Reward.

If the King's Subject becomes a Rebel, he is not properly called an Enemy, but a Traitor, and shall have Judgment against him as such, and not as an Enemy, because an Enemy is out of the Allegiance of the King; and if such a Person is succoured out of the Realm, this my Lord Hale tells us is not an *Adhering* to an Enemy within this Clause.

But I can see no Reason for this Difference between an Enemy or Traitor, for I think one and the same Man may be both.

Indictment for High Treason in adhering to the King's Enemies, setting forth that he with many *Frenchmen*, Enemies to the King did navigate a Ship called the *Clancarty*, with a Design to destroy the King's Ships; it was objected that the Adhering was not alledged to be against the King, and that the Navigating, &c. was not an Overt-Act of adhering without Fighting, or some Act done in an hostile Manner: Adjudged that an Indictment for *levying War or adhering to the King's Enemies* is not good without shewing some particular Instances; for these Words (*viz.*) *And be thereof proveably attainted by some Overt-Act* do immediately follow, and are connected to those Treasons; and that a *distinct Overt-Act* cannot be given in Evidence, but only such *Overt-Act* which relates to prove the Treason alledged in the Indictment; as for Instance, if consulting to kill the King is alledged, in such Case any Actings or Doings in Pursuance of such Consultation may be given in Evidence, because they are a farther Manifestation of the Treason alledged in the Indictment. But in the principal Case Adhering to the King's Enemies is an Adhering against him, that joining with rebel Subjects of his Allies, and fighting with them under the Command of an Alien Enemy, is Adhering to the King's Enemies; that Navigating this Ship without doing any hostile Act is an Overt-Act of Adhering.

An Enemy coming into *England* in a War-like Manner, shall be executed by Martial Law; but a Subject assisting him, is a Traitor.

Treason done by Sea.

As to this Matter, at Common Law, the Person was to be tried in that County where he had Lands; but now by the Statute of 35 H. 8. cap. 2. it may be tried in B. R. or in any County where the King appoints, and so shall Treason committed on the Sea; and this is by Vertue of the Statute of 28 H. 8. cap. 15. tho' by the Civil Law it must be tried before the Admiral.

Compassing to do it, is not Treason, for it must be actually counterfeited, and it must be like the Great Seal. (5.) Counterfeiting

If the Chancellor put the Seal to a Patent without a Warrant, this is no Treason now, but it was otherwise before the Seal. the Great Seal.

Making this Statute, as appears by the old Lawyers, *Briton* and *Bracton*, who wrote before that Time.

Putting the Great Seal to another Patent, is not Counterfeiting (as my Lord *Coke* says) but a great Misprision; and this was one *Leak's* Case, who glewed two Parchments so close that it could not be perceived, and put a Label through both, and upon the uppermost he wrote a Patent, and got the Great Seal affixed to the Label; then he took off the written Parchment, and left the Label hanging to the Blank; this was held to be a Misprision.

But I can see no Reason why it ought not to be High Treason, because it produceth the same Mischief with Counterfeiting, which is so; and if it creates the same Mischief, it should in Reason have the same Punishment.

Those who aid and consent to Counterfeiting, are within this Statute.

But the Counterfeiting of the Privy Signet is not Treason within this Act, but it is declared so to be by a subsequent Statute, viz. by 1 & 2 Ph. & Ma. cap. 11.

2 Roll.
Rep. 51.

One *Robinson* counterfeited the Privy Seal, but he omitted some Words in the Style, and added other Words, on Purpose that there might be a Difference between the true Seal and the Counterfeit; he likewise counterfeited a Grant, and by the Help of this counterfeited Privy Seal, he obtained the Great Seal to his Patent: This was declared to be High Treason, for having collected Money by these Counterfeits, he had usurped Regal Authority.

The Coin.

To forge the Coin, was Treason at Common Law, tho' the Offender did not utter it; and to counterfeit it, is made so by this Statute.

But Clipping, Washing, Filing, &c. was no Counterfeiting it within this Statute; it was made High Treason by a subsequent Act of Parliament, viz. by 5 Eliz. cap. 11. but it was no Corruption of Blood, or Loss of Dower.

What is
Money.

It is only the proper Money of this Nation; but now Forging or Counterfeiting any Foreign Money, if made Current here by Proclamation, is High Treason. per 1 Mar. cap. 6.

And Forging it, if not current here, is a Misprision of Treason in the principal Forgers, their Aiders and Abettors. 14 El. cap. 3.

(6) Bringing
Counter-
feit Money
into the
Realm.

It must be counterfeit and made in Imitation of *English* Money, and brought from Foreign Parts not within the Dominion of the King.

It must not barely be uttered here, but it must be brought in and uttered by one and the same Person; if so, 'tis Treason.

Trial.

2 W. & A. 3.

By the Statute of 7 Will. cap. 3. some Alterations are made in Trials of Traitors; for before that Statute, Men were committed for Treason, and Friends were not suffered to come near them; they had neither Pen, Ink, or Paper, and did not know

know

know for what Treason they were committed, or by whom accused; if by Chance any Person advised them without Leave of the Court, he was punishable; and if upon the Arraignment the Prisoner desired Council upon any Point of Law, those Counsel must be ready to argue it *instantly*, and the Court did give Judgment as soon.

'Tis true, he had Liberty to except against any of the Jury, but that could be no Advantage to him, because he never had a Copy of the Panel to consider against whom to except.

When he produced any Witnesses, they were not to be examined upon Oath, which (as it hath been observed) is either too great an Advantage for the Prisoner, or none at all, for if his Witnesses not sworn shall have equal Credit with those which are upon Oath, the Prisoner has too great an Advantage; but if they are not to have Credit, because not sworn, then why is he suffered to have any Witnesses on his Side?

My Lord Coke, so long ago as in *Anno 11 Jac. 1.* told us, ^{2 Bull. 147.} That the Jesuits had slandered our Common Law in the Case of Trials of Offenders for their Lives, because they had neither Counsel, nor were their Witnesses examined upon Oath.

For Truth cannot appear but upon the Testimony of Witnesses, and therefore 'tis absolutely necessary to put the highest Obligation on them on both Sides, which is an Oath.

By this Statute it is provided, That a Person indicted for ^{7 W. 3. c. 3.} Treason, whereby Corruption of Blood may be made, or for Misprision of such Treason, shall have a * Copy of the whole * Before he ^{pleads, but} Indictment five Days before his Trial, he desiring the same; ^{afterwards} and this is that he may advise with Counsel, by two of whom ^{'tis too late.} he may make a full Defence, and his Witnesses shall be upon ^{2 Salk. 634.} Oath: He is to pay for his Copy not exceeding 5 s. but he is not to have the Names of the Witnesses for the King.

That no Man shall be indicted, tried or attainted of such Treason or Misprision, &c. but upon the Oaths of two lawful Witnesses, who shall both speak to the same Overt-Act of Treason, or to different Acts, but of the same Treason, unless the Party is mute, refuseth to plead, or challengeth above 35 peremptorily, or confesseth his Fault.

But such Offender may be outlawed, and if attainted by Outlawry, yet he may come in and be tried by Law after such Outlawry, and he shall upon his Trial have the Benefit of this Act.

And where distinct Treasons of divers Kinds shall be alledged in one Indictment, one Witness to one Species of Treason, and another Witness to another, shall not be two Witnesses within the Meaning of that Law, and no Evidence shall be given of an Overt-Act, unless expressly laid in the Indictment.

The Prosecution must be with 3 Years after the Offence committed, except it be for a Treason in designing or attempting the Assassination of the King.

No Indictment, &c. shall be quashed for Mis-writing, or for false or improper *Latin*, unless Exception be taken to the same before the Evidence given in Court; neither shall any such Matter be a sufficient Cause to arrest the Judgment after Conviction, yet it may be reversed by Writ of Error.

When a Peer is tried, all the Peers who have a Right to sit and vote in Parliament, shall be summoned twenty Days before the Trial. They must take the Oaths.

But the A& doth not extend to any Indictment for counterfeiting the Coin, the Great Seal, &c.

Overt-A&.
2 Salk. 641.
Cro. Car.
117.

Charnock was indicted for High Treason, and at his Trial the Question was, Whether Words could be an Overt-A& of compassing the Death of the King: Adjudged that loose Words, without any Relation to the A& it self, could not, but Words of Persuasion to kill him, are Overt-A&s of Compassing his Death; so is Consulting how and in what Manner to kill him, 'tis the bare Imagination which makes the Treason, and any external A& which may be a Manifestation of such Imagination, is an Overt-A&.

38 & 9 W.
cap. 26.
Made perpetual by
7 A. C. 24.

Any Person mending a *Puncheon* (except such as are employed in the Mint) *Matrix*, *Stamp*, &c. or other Materials, by which the Figure of the current Coin shall be made or impressed, or making any *Edger*, or Instrument for making Letters round the Edges, resembling the coined Money, or buying or selling, or knowingly having in his House or Possession any such Tool or Instrument, they and their *Aiders* and *Abettors* shall be guilty of High Treason.

Conveying any of the said Instruments out of the King's Mints, guilty of the same Offence.

Edging any diminished Coin, or counterfeit Coin, like Edges coined at the Mints, Treason.

Colouring or gilding Coin, resembling the current Coin, &c. High Treason in them, their *Aiders* and *Abettors*.

Puncheon or *Dye* in the Possession of any one not employed in the Mint, or not having it by lawful Authority, may be seized and carried to a Justice, &c. to be produced in Evidence against the Person, and then to be destroyed by the Court, or some Justice.

Counterfeit Money, after produced in Evidence, shall be destroyed, &c.

Blanching Copper for Sale, or mixing blanched Copper with Silver, or putting off counterfeit Milled Money at a lower Rate than the same is denominated. Felony.

This A& shall not extend to make any Corruption of Blood, or Loss of Dower.

* Per 7. A.
c. 24. enlarged to
six months.

The Trials for these Offences shall be in such Manner as is used against Offenders for counterfeiting the King's Coin.

* No Prosecution, unless within three Months after the Offence.

A Man was attainted of Treason upon this Statute, and the *Corruption of Blood being saved*, the Question was, Whether he had forfeited his Estate, because in Attainders of Felonies, the Forfeiture to the Lord is by way of Escheat, *pro defectu Tenentis*, and there can be no Tenant, because the *Corruption of Blood* works an Incapacity to make the Estate descend? But there the *Corruption of Blood* is saved, so that there may be a Tenant, because the Estate may descend, and there is nothing to hinder it.

But it was adjudged in the House of Lords, That in Treason 'tis otherwise; for upon Attainders of Treason, the Lands come to the King not as Escheat, but as an immediate Forfeiture, which is a distinct Penalty from the *Corruption of Blood*; so that the *Corruption, &c.* may be saved, and yet the Forfeiture remain: And this was Baron Lovell's Case, who had a Grant of his Lands from the King.

Indictment for Treason must be found in that County where Dy. 236. b. the Fact was done, which may afterwards be remov'd into B. R.

If 'tis for levying War, conspiring the Death of the King, or; Lev. 386. adhering to his Enemies, it must conclude *contra Ligeantiam suam debitum*, else 'tis not sufficient, tho' the particular Facts set forth therein do shew that what was done by the Offender was against his Allegiance; this was Mr. Walcot's Case, who was executed for High Treason; and his Attainder was reversed in the House of Lords by one Vote.

So where one Tucker was attainted of Treason for being in 2 Salk 630. the Rebellion with the Duke of Monmouth, and upon a Writ of Error brought, the Error assigned was that *Contra * Ligeantiam* *The Word *sua debitum* were left out of the Indictment, and that there *Naturalis* need not be could be no Treason where there was no Allegiance, therefore, inserted be- an Alien Enemy cannot be guilty of Treason. 'Tis true, this cause *Al-* Indictment was that *Tucker ligeantiam suam debitum minime ponderans* *giance* is did wage a War, but a Man may not consider his Duty, and the *Genus*, yet not act against it; 'Tis true likewise that there are some and all Indictments where these Words are omitted, but these are In- *Species of* Indictments for Treasons made so by particular Statutes, and not *Allegiance* shall be where the Fact was Treason in its Nature. comprized,

There is likewise another Treason made by the Act, For the 2 Salk 633. better Security of her Majesty's Person and Government, &c. and that 4 & 5 An- is, If any Man after the 25th March 1706. shall maliciously, nze, c. 8. advisedly, or directly, by Writing or Printing, declare or af- 6 Anne, c. 7. firm, That the Queen is not lawful Queen, or that the pre- tended Prince of Wales hath any Title to the Crown, or that any other Person hath a Right to it, otherwise than according to the Acts of Settlement made 1 & 12 Will. or that the Kings and Queens of England are not able, by the Authority of their Parliaments, to make Laws sufficient to limit and bind the Crown of this Realm, shall be guilty of High Treason; and being thereof convicted and attainted, shall suffer Death, and all Losses and Forfeitures as in Cases of High Treason.

And

Treason. Petty Treason.

And if any one, by *Preaching, Teaching, or advised Speaking*, shall declare, maintain and affirm as aforesaid, such Person being lawfully convicted, shall incur the Penalty of a *Præmunire*.

But if the Prosecution be for Words, there must be Information given of such Words upon Oath, to one or more Justices of Peace within three Days after the Words are spoken; and then the Prosecution must be within three Months after such Information; and the Conviction must be by Oath of two credible Witnesses.

One *Fitzpatrick* was committed to *Newgate* by the Privy-Council for aiding Colonel *Dorington* to escape out of the *Tower*, being committed there for High Treason; but there being no Prosecution against him, and a Sessions past since his Committment, he was bailed.

The Form of a Mittimus.

To the Keeper of the Common Gaol, &c.

Suffex, ff. **I** Send you herewith the Body of T. R. who was brought before me this present Day, and charged with High Treason: These are therefore to command you to take the said T. R. into your Custody, and himself to keep in your Gaol, till he shall be from thence delivered by due Course of Law. Given under my Hand and Seal, &c.

Then the Justice must take a several Recognizance of every Witness to appear at the Assizes, and give Evidence against the Prisoner.

Accessaries: In High Treason there are no Accessaries, but all are Principals; and therefore my Lord Coke tells us, That what will make a Man accessory to a Felony before the Fact, the same will make him a Principal in High Treason.

Petty Treason.

THIS consists in three Particulars, by the Statute of 25 Ed. 3.

1. Where a Servant killeth his Master.
2. A Wife killing her Husband, or joining to kill him.
3. Ecclesiastical Person killing his Ordinary.

This extends likewise to the Mistress who hath no Husband, and to the Wife of the Master. 1. Servant killing his Master.

If a Servant hath Malice against his Master whilst he is in his Service, and afterwards being out of his Service, killeth him, this is Petty Treason; but killing him upon a sudden Quarrel, is Manslaughter.

Tho' the Servant is but 13 Years of Age, 'tis Petty Treason; so if he procure another to kill his Master, and he doth it in his Presence, 'tis Petty Treason in the Servant, and Murder in the other. *Plowd.* 100.

So where the Servant intends Murder to another, and the Master is killed.

If she procure another to murder her Husband, she is only Accessary, unless she was present in the House when the Fact was committed, tho' not in the same Room, and she shall be hanged, and not burnt, because she, as Accessary, cannot be guilty of Treason where the Principal is guilty of Murder; but if the Person procured is a Servant, then 'tis Petty Treason in both. 2. Wife killing her Husband. Cro. Car. 331, 382. W. Jones, 425.

If she poison an Apple with an Intent to kill a Stranger, and the Husband eats it and dies in a Year, 'tis Petty Treason.

If she and another, not being her Servant, killeth the Husband, 'tis Petty Treason in her, and Murder in the other.

Petty Treason doth suppose a Trust and Obedience in the Offender, which is either Civil, as in the Cases abovemention'd, or Ecclesiastical, as between the Ordinary and his Clerk.

But this Statute shall not be construed according to Equity; and therefore, if the Son killeth the Father or Mother, 'tis not Petty Treason, unless he was a Servant receiving Wages, as well as a Son.

Aiders, Abettors and Procurers, are adjudged to be within this Act.

An Indictment against a Servant for killing his Master.

Middl' ff. **J**UR', &c. quod W. G. de, &c. die Martii Anno Regni, &c. in domo mansionali W. N. apud H. in Com' pzed' Gen' bi & armis, viz. cum quodam cultello ad balenciam quatuor denar' quem idem W. G. adtunc & ibidem in manu sua dextra tenuit in & super pzedic' W. N. adtunc magistrum suum & in pace Dei dicti Dom' Regis existen' voluntarie & ex malitia sua pzeconitata insulsum fecit & pzetat' W. N. adtunc magistrum suum adtunc & ibidem cum cultello pzed' felonice & proditorie apud H. pzedic' in Com' pzed' percussit & vulnerabit, & eidem W. N. apud H. pzed' in Com' pzed' felonice proditorie & ex malitia sua pzeconitata cum cultello pzed' unum vulnus mortale in & super dextram

dextram partem ventris sui dedit longitudinis duorum pol-
 licium & profunditatis unius pollicis de quo quidem vulnere
 mortali idem W. N. a pzed' 31 die Martii Anno supradicto
 usque quintum diem Aprilis pzed' sequen' apud H. pzed' langu-
 bat & languidus vixit quo quidem quinto die Aprilis Anno
 supradicto pzed' W. N. apud H. pzed' in Com' pzed' de vul-
 nere mortali pzed' obiit & sic pzed' jur' super sacramentum
 suum pzed' dicunt quod pzed' W. G. pzed' quinto die Aprilis
 Anno supradicto apud H. pzed' in Com' pzed' pzed' W. N. modo &
 forma pzed' ex malitia sua pzed' voluntarie felonice & pditione
 interfecit & murtabit contra pacem, &c. & quod quidem
 A. B. de H. pzed' ante pditionem pzed' p pzed' W. G. sic ut
 pferitur factam videlicet 27 die Martii Anno supradicto eun-
 dem W. G. apud H. pzed' in Com' pzed' ad pditionem pzed'
 in forma pzed' ppetrand' felonice consuluit, excitabit & p-
 curabit contra pacem, &c.

Against a Wife for murdering her Husband.

Suffex, ff. **J**UR', &c. quod E. N. nuper de, &c. Vidua nu-
 per Uroz R. N. de H. in Com' pzed' Gen' De-
 um pze oculis suis non habens sed instigatione
 diabolica seducta contra debitum matrimonii sui vinculum ac
 contra amorem quem eadem E. N. erga pzed' R. N. nuper
 virum suum gerere deberet ex malitia sua pzed' cogitata 31 die
 Martii Anno Regni, &c. apud H. pzed' in Com' pzed' bi & ar-
 mis in & super pzed' R. N. virum suum in pace Dei & dict'
 Dom' Regis adtunc & ibidem existen' insultum fecit (as in
 the former.)

Disposition of Treason.

THIS is when one *knoweth* of any Treason, and conceals
 it; but it must be a *bare Knowledge* only; for if the Per-
 son consents to the Treason, he is a Traitor.

Therefore the Party ought, as soon as may be, to reveal it
 to some Magistrate.

But receiving a Traitor, and comforting him, knowing him
 to be such, he is a principal Traitor himself.

If one knowing upon what Design Persons meet, and hear
 them discourse of Treason, though he says nothing himself, or
 doth any Act towards it, yet this is Treason; for 'tis more
 than a Concealment; because, by his Silence, he gives Con-
 sent to what was then doing.

But

But if he did not know upon what Design they met, and he casually hears their traitorous Discourses, and says nothing, and never comes again to their Consultations, this Concealment is only Misprision of Treason; but if he comes into their Company again, and hears their Discourses, and then conceals it, this is High Treason, for it sheweth his Approbation of their Design: And this was Sir *Everard Digby's* Case, who was present at the Powder-Treason, met with the Traitors and heard their Discourses, but neither said or acted any Thing. For to make Misprision of Treason there must be *Knowledge* of the Design, (as already hath been observed) and of the Persons, or some of them, and likewise a Concealment of it, for a Man cannot be said to conceal what he doth not know; and therefore, if I tell a Man, that there will be a Rising at such a Time, and do not mention the Persons who are to be in Arms, or the Nature of the Plot, and this is concealed by that Person to whom I told it, 'tis but Misprision of Treason, because he hath no Knowledge of the Treason it self.

But if a Man knows the Conspirators, and then in general Discourse tells the People there will be a Rising, and doth not discover the Plot, or the Traitors, this is Misprision of Treason; for notwithstanding such general Discourse, he conceals both the Treason and Traitors. The safest Way in these Cases, would be to discover the Treason to some Magistrate; for if to a Person who hath not Authority to take an Examination, it may be a Question, Whether such a Discovery will acquit him from Misprision of Treason? *Kelinge 22.*

Treasurer of County-Stock.

THE County-Stock is for Relief of the Prisoners in the Gaols, and for maimed Soldiers.

The Money is usually collected by the Churchwardens of every Parish in the County, who are to pay it over to the High Constables ten Days before every Quarter-Sessions, and the High Constables are at the Sessions, to pay the Treasurer the Money collected for maimed Soldiers, but that collected for Gaols is to be paid quarterly to the Knight-Marshal in such Sums as the Justices of Peace shall think fit.

In Default of Payment of the Gaol-Money, the High Constable forfeits 20 s. every Time, and 40 s. for the maimed Soldiers Money.

If the Default is in the *Churchwardens* and *Petty Constables*, then for Gaol-Money they forfeit 10 s. and for Soldiers Money.

20 s. each Time; which Forfeitures are to be levied by the Treasurer, by Distress and Sale of the Goods of the Defaulter.

The Treasurer himself is to be chosen at *Easter* Sessions by the Majority of the Justices of the Peace, and is to continue but for one Year, and then at the next *Easter* Sessions to give up his Account to his Successor.

And if he refuse the Office, or, having accepted it, to give Relief or Account, the Justices in Sessions may fine him, but not under three Pounds. 43 *Eliz.* 3.

Trees. See Hedge-breakers.

Trial. See Jurors.

THE Trial of an Alien, who lives here under Protection of the Laws, if it be for Treason, it shall not be *per medietatem Lingua*; but 'tis otherwise in Petit Treason, Murder or Felony. 1 & 2 *Ph. & M.*

Dyer 114 b. But such a Trial *per medietatem Lingua*, is not to be allowed *ex Officio*, or *ex debito Jusitiae*, but at the Instance of the Party; for if he doth not desire it, 'tis to be at Common Law by a Jury of *English* Men.

1 And. 362. If a Man commits Treason in *Ireland*, he may be tried here; and this was *O-Rork's* Case.

33 H. 8. By the Statute of 33 H. 8. 'tis enacted, That if a Person is cap. 23. examined by three of the King's Council, upon Treason, Murder, &c. and confesseth it, or is suspected by the Council to be guilty; in such Case, the King, by a Special Commission, may have the Offender tried in any Place.

1 And. 194. One *Grevel* was examined before the Council as Accessary to a Murder in *Warwickshire*, and it was adjudged, That he should be tried there, because he was examined as an Accessary, and not for the Murder it self.

But regularly Indictments must be found in the proper County, and the Trial must be by Jurors of that County.

* But by a Jury of both Counties. Stroke in one County, and Death in another, the * Offender shall be tried where the Party died. 2 & 3 *Ed.* 6. cap. 24.

A Trial cannot be had the same Sessions in which the Party is indicted, unless in Criminal Cases, and that is *in favorem Libertatis*.

Dyer 56. Sid. 335. But then the Offender must be in Custody; but this seems not to be agreeable to Reason, that a Criminal should have a longer Time allowed him to advise in trivial Matters, than in those which concern his Life.

Yet the Defendant was indicted and tried the same Sessions² Cro. 404. for a *Barrettry*, and held good, because he appeared; and in such Case, upon his Appearance, he may be tried as well then as afterwards.

Tunnels. See Dogs.

Vagrants and Vagabonds.

THE old Statutes 39 *Eliz. cap. 4.* and 1 *Jac. cap. 7.* relating 12 A. c. 23. to Vagrants, are now repealed by the Statute 12 *Anna, cap. 23.* and so much of the Statute 7 *Jac. 1. cap. 4. Sect. 5.* which relates to the *privy Search*; and by this new Act several Alterations have been made, which may be reduced under the following Heads:

- (1) The Description of a Rogue and Vagrant,
- (2) His Apprehending and Examination.
- (3) His Punishment.
- (4) The Place where he is to be sent.
- (5) The Pass, Certificate, and Manner and Charge of passing him.
- (6) The Binding a Vagrant Apprentice.
- (7) The Punishment of a Master of a Ship bringing over a Vagrant from the Plantations, &c.
- (8) Beggars in Streets, and Furious and Lunatick.

§. A *Rogue* is described as by the former Statutes, only some (1) Description of Persons are added, and some are omitted. *a Rogue.*

Able-bodied Men. { See Labourers *postea.*

Egyptians. —Or wandering as such.

Bearwards, —Per 21 *Jac. 28.*

Beggars, —

Craft, —Using any subtle Craft,

Fencers, —21 *Jac. cap. 28.*

Fidlers, —Per *Stat. Anna*, called Minstrels.

Fortune-Tellers. { Or, like crafty Science,

Games, —Unlawful, using them,

Glas-men, —21 *Jac. cap. 28.*

Idle Persons, —Wandering and Begging.

Juglers, —Wandering, Per *Stat. 7 Jac. c. 4.* not wandering.

Labourers.

Vagrants and Vagabonds.

- Labourers. } All Able-bodied Men who run away, and leave
 their Wives and Children to the Parish ; and
 not having otherwise to maintain themselves,
 loiter and refuse to work for the usual
 Wages.
 Palmestry, — Pretending to it.
 Patent-Ga- }
 therers. } Pretending to it.
 Pedlars, }
 Petty-Chap- } By the former Statutes, but now omitted.
 man. }

a Salk.
 Mod. Cases
 240.

W. B. was indicted at *Portsmouth*, for that he being an idle Person did wander in that Town selling Wares as a *Petty-Chapman*, and upon a Demurrer to this Indictment it was insisted to maintain it that a *Petty-Chapman* is a Vagabond by the
 8 & 9 W. Statute 39 *Eliz. cap. 4.* 'Tis true, by the * Statutes which are
 cap. 25. subsequent, some *Petty-Chapman* (*viz.*) such as are qualified by
 9 & 10 W. those Statutes, may follow that Occupation, but not in *Borough-Towns or Corporations* ; so those Statutes do not give them
 cap. 27. Liberty to trade in such Places ; but adjudged that a Vagabond
quatenus such was not indictable, because at Common Law a
 Man might go where he would ; but if he is an idle or loose
 Person, he might be taken up as a Vagrant, and bound to his
 good Behaviour, and might be compelled to Work by the
 Statute of Labourers : This Indictment was quash'd.

Physiognomy, — Pretending to it.

Players, — 21 *Jac. cap. 28.*

Seamen, }
 Soldiers, } By former Statutes, but now omitted.
 Tinkers. }

Those who are excepted out of this Act, are Soldiers and
 Mariners, and Sea-faring Men, licensed by some Testimonial
 or Writing, under the Hand and Seal of a Justice of Peace,
 setting down the Time and Place of Landing, and to which
 they are to pass in the direct Way.

The

The Form of the Licence.

To all Constables, Headboroughs, &c. in the County of, &c.

WHereas it appeareth unto me, That R. B. Mariner, did on the fifth Day of this Instant May, land at D. in the County aforesaid, and is travelling towards P. in the County of D. I do therefore licence him to pass the direct Way through this County from D. aforesaid toward P. in the County of, &c. that being the Place to which he desires to pass, and that you do not disturb or molest him in his said Passage, he demeaning himself orderly; this Licence to be in Force for the Space of nine Days, within which Time he may travel thither. Given under my Hand and Seal this fifth Day of May, &c.

Any Person who falls under either of the Descriptions before-mentioned, being found wandering, begging, or misordering himself, any Officer or Inhabitant may apprehend him, and carry him before a Justice of Peace; and if a Constable neglects or refuses to apprehend him, 'tis a Neglect of his Duty. ^{(2) The Duty of a Constable in taking a Vagrant.}

If an Inhabitant charged by a Justice, or any other lawful Authority, refuses or neglects, he forfeits 10 s. the Conviction to be by one Witness, before one Justice upon Oath; the Penalty to be levied by Distress and Sale of his Goods, to the Use of the Poor of the Parish where the Offence was committed.

Any Person apprehending a Rogue or Vagrant, and bringing him before a Justice of Peace, shall have 2 s. paid to him by the Officers of the Parish where he was found begging, and thro' which he passed unapprehended; this must be by an Order under the Hand and Seal of the Justice.

The Constable or Officer refusing to pay the 2 s. on Demand, the Justice by Warrant under his Hand and Seal, may levy 20 s. by Distress and Sale of his Goods, and out of it allow the Person apprehending the 2 s. and such other Recompence for his Trouble, Charge, and Loss of Time, as he thinks fit.

The Justice before whom a Rogue or Vagrant is brought, may examine him on Oath, or any other Person who can inform him of the Place of his Abode or Birth, which Examination must be subscribed by the Person examined, and it must be transmitted to the Sessions.

The Person who refuses to be examined on Oath, or who gives an insufficient Account, and is detected of Falshy, in a summary Way, shall be deemed an incorrigible Rogue.

Constable or other Officer failing in his Duty in apprehending or conveying Rogues or Vagrants, or otherwise defective in the same, or any Person disturbing him in the Execution of his

Vagrants.

his Office, or rescuing, or assisting in the Escape, being convicted by the View of the Justice or Oath of one Witness, forfeits 20 s. to the Use of the Poor of the same Parish, to be levied by Warrant, by Distress and Sale of Goods, &c.

The Form of a Warrant to levy 20 s. for not apprehending a Rogue.

To the Constable, &c.

Suffex, ss. **W**Hereas it was duly proved before me R. B. Esq; one of his Majesty's Justices of the Peace, That several Persons were lately wandering and begging in the Parish of H. in the County of, &c. and that due Notice thereof was given to J. O. then Headborough of the said Parish, but that he neglected or refused to apprehend the said wandering Beggars, and to carry them before the next Justice of Peace, as by Law he ought, by Reason whereof he hath forfeited the Sum of 20 s. These are therefore to require you to levy the said Sum of 20 s. upon the Goods and Chattels of the said J. O. by Distress and Sale thereof, rendering to him the Overplus, if any such shall be, and that you pay the same to the Churchwardens or Overseers of the Poor of the Parish of H. aforesaid, where the said Offence was committed, for the Use of the Poor of that Parish. Given, &c.

The Form of the Order for the Payment of 2 s. for taking a Rogue, &c.

To R. B. Headborough of the Parish of &c.

Suffex, ss. **W**Hereas it appeareth unto me, That T. B. a Vagrant, did beg and wander in the Parish of M. in the County of, &c. and passed through the said Parish unapprehended, and afterwards was taken in the Parish of B. in the County, &c. by J. O. an Inhabitant of the said Parish of B. wandering and begging there, and was by him brought before me R. B. Esq; one of his Majesty's Justices of the Peace for the said County, in Order to be examined and punished as by Law he ought. Now I do hereby order the Headborough of the said Parish of H. through which the said T. B. passed unapprehended as aforesaid, to pay unto the said J. O. who afterwards did apprehend him, the Sum of 2 s. on Demand. Given under my Hand and Seal, &c.

A Warrant

A Warrant to levy 20 s. on the Headborough refusing to pay 2 s.

To the Constable, &c.

Suffex, ff. **W**Hereas by an Order under my Hand and Seal, I did lately appoint R. R. the Headborough of the Parish of H. in the County of, &c. to pay unto J. O. the Sum of 2 s. for apprehending T. B. a Vagrant in the Parish of B. in the County of, &c. where he was taken by the said J. O. wandering and begging, who was also before that Time wandering and begging in the Parish of H. through which he passed unapprehended, which said 2 s. being lawfully demanded of R. R. the Headborough of the said Parish of H. he refused to pay the same. These are therefore pursuant to the Law in that Case made and provided, to require you forthwith to levy the Sum of 20 s. upon the Goods and Chattels of the said R. R. by Distress and Sale thereof, out of which I do hereby allow unto the said J. O. who apprehended the Vagrant as aforesaid, the Sum of 2 s. and likewise 10 s. more for his Trouble, Loss of Time, and Expences, which said respective Sums you are forthwith to pay unto him, and to render the Overplus to the said R. R. and hereof fail not. Given under my Hand and Seal, &c.

A Warrant to levy 10 s. upon an Inhabitant, refusing to apprehend a Rogue, being lawfully charged.

To the Constable, &c.

Suffex, ff. **W**Hereas J. O. an Inhabitant of the Parish of H. was duly and lawfully charged to apprehend a Rogue, who resorted to the House of W. N. in the said Parish of, &c. and did beg there, but the said J. O. did refuse to apprehend the said Rogue, of which said Offence the said J. O. hath been lawfully convicted before me, by Reason whereof he hath forfeited 10 s. These are therefore to require you forthwith to levy the said Sum of 10 s. upon the Goods and Chattels of the said J. O. by Distress and Sale thereof, rendering to him the Overplus, if such shall happen to be, and that you pay the said 10 s. to the Churchwardens or Overseers of the Poor of the said Parish of H. where the said Offence was committed, for the Use of the Poor thereof: And hereof fail not. Given, &c.

The Person who hath a legal Settlement, as well as a Rogue (3) The Pauper or Vagrant who hath not, if found begging, &c. may be ordered by a Justice to be whipped, or sent to the House of Correction, and then, and not before, sent either by an Order to grant.

the Place of his last Settlement, or if that cannot be known, by a Pass to the Place of his Birth.

If he is a *dangerous Rogue*, he may be sent to the House of Correction till the next Sessions; and then if the major Part of the Justices adjudge him an *incorrigible Rogue*, he shall be whipt three Market-Days successively in some Market-Town, and afterwards kept to hard Labour in the House of Correction, and if he escape from thence after a Commitment by the Sessions, 'tis Felony, and to be determined in the County where he shall be taken.

The Mittimus before a Vagrant is sent by an Order or a Pass.

To the Constable, &c. and to the Keeper of the House of Correction, &c.

Suffex, ff. **I** Send you herewithal the Body of T. P. a Vagrant, who was found wandering and begging this Day in the Parish of H. in the County of, &c. and brought before me R. B. Esq; &c. and you are hereby required to receive him into your Custody, and to keep him to hard Labour in your House of Correction, until he shall be lawfully discharged from thence. Given under my Hand and Seal, &c.

6 C. cap. 9. Justices within their respective Jurisdictions may commit Vagrants and other Criminals charged with small Offences, either to the Common Gaol or House of Correction, as they in their Judgment shall think proper.

A Mittimus for a dangerous Rogue.

To the Constable of, &c. and to the Keeper of the House of Correction, &c.

Suffex, ff. **I** Send you herewithal the Body of J. O. a Vagrant, who was found wandering and begging this Day in the Parish of H. in the County of, &c. where he was apprehended and brought before me for the said Offence, and upon his Examination and other Circumstances, I have just Cause to believe the said J. O. to be dangerous to the People, and very unlikely to be reformed: You are therefore to receive the said J. O. into your Custody, and there keep him to hard Labour until the next Quarter-Sessions of the Peace to be held for the County of, &c. And hereof fail not. Given under my Hand and Seal, &c.

If

If he hath any legal Settlement since his Birth, he must be sent thither by an Order of two Justices. If no such Settlement can be found, then he must be sent by a *Pass* by one Justice to the Place of his Birth: But if under fourteen Years, and he hath Father and Mother living, then to the Place of Abode of such Father and Mother, in Case such Place of Birth or Abode can be known; but if it cannot be known, then to the Parish where he was last found begging or misordering himself, and through which he passed unapprehended, there to be delivered to the Parish Officer.

The Justice sending a Vagrant to the Place of his Birth, if he had any legal Settlement subsequent, forfeits 5 *l.* to be recovered by the Informer, by Action, Bill, Complaint, or Information in the Courts at *Westminster*.

R. W. was settled at *E.* and afterwards became a Vagrant: Adjudged that did not determine his Settlement; for by the Statute 39 *Eliz. cap. 4.* he may be sent to the Place of his Birth, and by the Statute 43 *Eliz. cap. 2.* he may be sent as a poor Person to the Place where he was last legally settled; but if that cannot be known, then to the Place of his Birth, so that both these Statutes are consistent. 2 Salk. 526

The Parish to which a Vagrant is sent by a *Pass*, must employ him in Work till he gets a Service; refusing to work, the Overseer, &c. shall carry him before a Justice in order to be sent to the House of Correction. Parish not employing him or suffering him to escape voluntarily, if he wanders again, and is retaken begging or wandering, the Justice where he is taken shall compute the Charge the County was at in taking him, which by Warrant shall be levied on any Constable, Churchwarden, or Overseer who was in Default. And if such Default was in another County, the Warrant shall be brought to a Justice in that County, who shall cause the Money to be levied for the Use of the Place or Person where such Charge shall be expended, and the Officer upon whom 'tis levied, may put it into his Rates, to be allowed by the Inhabitants of his Parish.

Headborough or Petty Constables not conveying a Vagrant as directed, forfeits 20 *l.* one Moiety to the Poor, the other to the Informer.

The Form of the Pass where no legal Settlement could be found since the Birth, &c.

To the Constable, &c.

(5.) The Pass.

* Or pra-
estising as a
Fencer, or
as the Case
is.

† Or that
the said
A. B. is un-
der the Age
of 14 Years.
and hath a
Father now
living and

residing in the Parish of &c. Or that the said A. B. was found begging in the Parish of L. through which he last passed unapprehended, and the Place of his Birth cannot be discovered, and it doth not appear to me, that he hath had any legal Settlement since his Birth.

Sussex, ss. **W** Hereas A. B. being (as he informed me) about the Age of twenty-five Years, was this Day apprehended in the Parish of H. &c. * wandering and begging there, and was forthwith brought before me R. B. one of his Majesty's Justices of the Peace for the said County, and was by me sent to the House of Correction, and upon Examination of the said A. B. and of R. R. taken before me on Oath, it doth appear that the said † A. B. was born at, &c. in the County, &c. and it doth not appear to me, that he hath obtained any legal Settlement since his Birth: These are therefore to require you to convey the said A. B. in the next direct Way to the said Parish of, &c. and there deliver him to the Constable, or other Officer of the said Parish to be there provided for according to Law.

If the Place be out of the County, then say, To convey the said A. B. in the next direct Way to the Parish of, &c. that being the first Town in the next Precinct; thro' which he ought to pass to the said Parish of, &c. to be from thence conveyed to the said Parish of, &c. And I do hereby allow the Space of seven Days for his Passing to the said Parish of, &c. Given under my Hand and Seal, &c.

Mittimus of a Vagrant to the House of Correction, refusing to Work.

To the Constable, &c. and to the Keeper of the House of Correction, &c.

Sussex, ss. **W** Hereas T. B. a Vagrant being taken wandering and begging in the Parish of H. &c. in the County, &c. was lately brought before me, and it not appearing to me, that he hath obtained any legal Settlement since his Birth, but that he was born in the Parish of L. &c. I did therefore by a Pass under my Hand and Seal, send him from H. the Place where he was taken the next direct Way to the Parish of L. where he was born; and he being delivered to the Officers of the said Parish of L. they would have employed him in Work, till he could get some Service or Employment, but he refused, and still doth refuse to work: These are therefore to require you to receive the said T. B. into your Custody, and to keep him to hard Labour until he shall be discharged by due Course of Law, &c. Mitti-

Mittimus of a Vagrant to the House of Correction, escaping from the Place to which he was sent.

To the Constable, &c. and to the Keeper of the House of Correction, &c.

Suffex, ff. **W**Hereas T. B. a Vagrant was sent by a Pass from H. in the County of, &c. to the Parish of L. in the County of, &c. and delivered to the Churchwardens of the said Parish of L. or to one of them, but did soon afterwards escape from the said Churchwardens, and was found and retaken wandering and begging in the Parish of R. &c. all which hath been duly proved before me. I do therefore herewithal send you the Body of the said T. B. requiring you to receive him into the House of Correction, and there keep him to hard Labour till the next * Quarter-Sessions of the Peace to be holden for, &c.

*If he shall
not then
give Secu-

rity for his Good Behaviour for a Year, he shall be adjudged an incorrigible Rogue, and punished as such.

A Warrant to levy the Charge upon the Parish not employing him, or suffering him to escape.

To the Constable, &c.

Suffex, ff. **W**Hereas T. B. a Vagrant was lawfully sent by a Pass to the Parish of L. in the County, &c. that being the Place of his Birth, the Place of his last Settlement not being known, and being delivered to the Officers of the said Parish of L. they refused to imploy him in Work, but voluntarily suffered him to escape: And whereas the said T. B. was afterwards retaken, wandering and begging in the Parish of H. &c. the Charge whereof doth amount to 40s. I do therefore require you to levy the said Sum of 40s. by Distress and Sale of the Goods and Chattels of R. B. one of the Overseers of the Poor of the said Parish of L. in Default for not employing the said T. B. but suffering him to escape as aforesaid, and that you pay the said 40s. to the Churchwardens of the said Parish of H. for the Use of the Parishioners of the said Parish by whom the said Charge was expended.

A Warrant to levy 20l. for not conveying the Person to the Place where he was sent.

To the Constable, &c.

• Or did
counterfeit
a Certifi-
cate, Re-
ceipt or
Note, as the
Case is.

Sussex, ss. **W**Hereas J. O. the Headborough of H. in the County of, &c. was ordered by a Pass to convey T. B. a Vagrant, from the said Parish of H. where he was taken wandering and begging, to the Parish of L. in the County of, &c. where he was born, but the said J. O. did not convey or * cause the said T. B. to be conveyed to the aforesaid Parish of L. he being the Person really intended by the said Pass to be conveyed thither, by Reason whereof he hath forfeited 20l. These are therefore to require you forthwith to levy the said Sum of 20l. on the Goods and Chattels of the said J. O. by Distress and Sale thereof, rendering to him the Overplus, and that you pay one Moiety thereof unto R. R. who first informed me of the said Offence, and the other Moiety to the Churchwardens and Overseers of the Poor of the Parish of, &c. where the said Offence was committed, for the Use of the Poor of the said Parish. And hereof fail not. Given, &c.

The Justice who makes the Pass shall at the same Time give a Certificate to the Officer who conveys the Vagrant ascertaining how he is to be conveyed, either by Horse, Cart, or on Foot, and to what Place, and in what Time, and what Allowance the Officer is to have.

The Form of a Certificate.

To the Constable, &c.

Sussex, ss. **W**Hereas by a Pass (recite the Substance of it) I do hereby order and direct, that the Person is to be conveyed thither on Foot in the Space of three Days, for which the said Constable is to be allowed the Sum of 9s. and no more. Given under my Hand, &c.

The Constable is to pursue the Directions in the Pass, and Certificate, and pass the Vagrant the direct Way to the Place where he is ordered to be sent, if 'tis in the same County where he was apprehended, if not, then to the first Town of the County named in the Pass or Certificate, and there to deliver him to the Constable or Headborough, together with the Pass, taking a Receipt of the Delivery upon the Certificate.

Such

Such next Constable or Headborough must forthwith carry the Vagrant before a Justice, &c. who must cause him to be stript and whipt, or sent to the House of Correction for two or three Days, and to be kept at hard Labour there.

From thence he is to be conveyed with the said Pass, but with a new Certificate to the next County, and so from County to County till brought to the Place where first ordered to be sent.

The Constable there, &c. is to receive him, together with the Pass, and to sign a Receipt of his Delivery as aforesaid.

But no Constable is obliged to receive him, unless it appear by the Pass that he has been whipt, or sent to the House of Correction.

Women great with Child, Soldiers wanting Subsistence, and having Certificates from their proper Officers, or from the Secretary at War, and such as the Justice shall judge not able to undergo such Punishment, must not be sent to the House of Correction, or be whipt; this must be certified in the Pass.

Headborough counterfeiting a Certificate or altering the Sum, or not conveying as directed, forfeits 20*l.* besides the Sum so fraudulently taken, one Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale of the Goods of the Offender, by Warrant under the Hand and Seal of one Justice.

*The Form of a Warrant to levy the 20*l.* for altering the Sum in the Certificate.*

To the Constable, &c.

Suffex, ss. **W**Hereas by an Order under my Hand and Seal, I did lately direct A. B. the Headborough of H. to convey J. O. a Vagrant, from the Parish of H. to the Parish of L. that being the Place of his Birth: And I did farther Order, That the said J. O. should be conveyed thither on Foot in the Space of three Days from the Date of the said Order and Certificate, and I did allow the Sum of 9*s.* and no more unto the said Headborough for his Charge in conveying the said Vagrant as aforesaid; which said Sum of 9*s.* was * altered by the said A. B. and by him made 19*s.* all which * Or Coun- bath been duly proved before me, by Reason whereof he hath forfeited terfeited 20*l.* These are therefore to require you forthwith to levy the said the Certifi- Sum of 20*l.* upon the Goods and Chattels of the said A. B. by Distress cate, or and Sale thereof, rendring to him the Overplus, if any such there shall not con- veyed the happen to be, and that you pay one Moiety thereof to H. C. who first Vagrant as informed directed.

informed me of the said Offence, and the other Moiety to the Church-wardens or Overseers of the Poor of the Parish of L. where the said Offence was committed, to the Use of the Poor of the said Parish. Given under my Hand and Seal, &c.

A Justice may examine a Constable or other Officer on Oath touching such Conveying and Delivery, and if they refuse to be sworn, or otherwise neglect their Duty, then they are to lose the Sum allowed by the Certificate.

(7.) Rates Justices in Sessions may appoint Rates for passing, and for Passing. make Orders at Discretion, and raise Money for that Purpose to be paid quarterly to the High Constables, who are to account for the same, and pay to the Petty Constables what shall be allowed by the Justices Certificate, taking a Receipt for the same.

The Certificate and Receipt the chief Constable may discount in his Account with the Treasurer of the County-Stock.

Sessions likewise to which Passes are transmitted, may enquire of Defaults of Officers in permitting or encouraging Escapes, and punish the same according to the Nature of their Offence.

A Rogue brought from *Ireland* and apprehended here begging, may be put on Board any Vessel in Order to be reconveyed.

(8.) Rates The Rates for Reconveying being appointed by the for recon- Sessions, the Constable must make Oath before one Justice veying a what Expences he has been at; then the Justice by a Rogue to an Order under his Hand and Seal must direct the Pay- Ireland ment. brought hither by a Master of a Ship.

Beggars in Constable, &c. on Complaint of any two Inhabitants, is Streets and to remove loose, idle and disorderly Persons, as *blind* and Highways. *lame*, from Begging in Streets, Highways and Passages; and on viz. Lame their Refusal to be gone, or if they beg there a second Time, and Blind. may cause them to be whipt till bloody.

Constables, &c. neglecting or refusing, for each Offence forfeits ten Shillings to the Poor where the Offence was committed: Conviction is to be on Oath of two Witnesses before one Justice, within twenty-four Hours after the Offence, &c.

The Form of the Warrant against an Headborough, for not removing the Lame and Blind.

To the Constable, &c.

Suffex, ff. **W**Hereas A. B. and C. D. two of the Inhabitants of the Parish of L. did complain to W. B. the Headborough of the said Parish, in the Absence of W. A. the High Constable, that several blind Men did place themselves on the first Day of May last in the Highway in the said Parish of L. and did beg there, to the great Annoyance and Disturbance of the Passengers, and the said W. B. did not upon due Notice thereof as aforesaid, cause them to be removed, but suffered them still to continue there begging: And whereas the said A. B. and C. D. did within 24 Hours next after such Neglect, make Oath thereof before me R. B. Esq; one of his Majesty's Justices of the Peace for the said County of S. where the said blind Men were found begging: These are therefore to require you to levy the Sum of 10s. by Distress and Sale of the Goods and Chattels of the said W. B. rendring to him the Overplus, if any such shall happen to be, and that you pay the same to the Churchwardens or Overseers of the Poor of the Parish of L. for the Use of the Poor thereof, that being the Parish where the aforesaid Offence was committed. Given under my Hand and Seal, &c.

If it appear to the Justice by the Confession of the Vagrant, Binding a Vagrant Apprentice.
or by the Oath of one Witness, that he had no lawful Settlement since his Birth, and that he hath committed Acts of Vagrancy, or hath been a common Beggar, or Vagrant, for two Years last past, tho' he had formerly a Settlement, or is a dangerous Rogue, then instead of punishing him, the Justice, or Justices, may bind him Apprentice for seven Years to the Person who apprehends him, or to any other Person who will receive him, and employ him in Great Britain, or in any of his Majesty's Plantations.

But if he is to be transported to such Plantations, the Master must be bound in a Recognizance of the Penalty of 40 l. that the Person shall be employed in the King's Plantations, or in a British Factory, and supplied with Necessaries fitting and convenient, and not to be sold to an Alien, but to be discharged in 7 Years, which Recognizance shall be transmitted to the Quarter-Sessions.

The Vagrant may appeal to the next Sessions against the Order for his Apprenticeship, but must be kept in the House of Correction in the mean Time, which Appeal shall be final.

The

The Condition of the Recognizance.

Recogni-
zance in
40 l.

THE Condition of this Recognizance is such, That whereas T. B. a Vagrant, being lawfully placed as an Apprentice or Servant to the above-bownden R. R. for the Space of seven Years, and is now about to be transported beyond the Seas: If therefore the said T. B. shall be sent and employed, during all that Time, in some of his Majesty's Plantations, or in some British Factory, and there supplied with Necessaries fitting and convenient for his Degree, and shall not be sold to any Alien; but at the End of his seven Years from the Commencement of his said Apprenticeship, shall be absolutely discharged and set at Liberty, then this Recognizance shall be void, otherwise shall remain in full Force and Vertue.

(11.) Fur-
ious and Lu-
natick.

Two Justices may by Warrant cause furious and lunatick Persons to be apprehended and safely locked up, and if necessary, then to be chained, if his legal Settlement was in that County; if not, then such Person shall be sent to the last legal Place of his Settlement, in the same Manner as Vagrants are to be sent (excepting only the Whipping) and there kept lock'd and chain'd.

Two Justices may order the Charges to be defrayed out of the Estate of the Person; and if he hath no Estate, then the Charges, during his Restraining, shall be made by such Ways and Means, as the Poor of such Parish are by the Laws in Being to be provided for.

The Warrant to apprehend a Madman.

To the Constable, &c.

Suffex, ss. **W**HEREAS T. B. a furious and disorderly Person hath been lately seen walking in the Parish of H. &c. to the great Disturbance and Frightning the People there: These are therefore to require you to apprehend the said T. B. and cause him safely to be locked up until he shall be discharged by due Course of Law. And hereof fail not. Given under our Hands and Seals, &c.

(12.) Ma-
ster of a
Ship bring-
ing over a
Vagrant.

The Master of a Ship bringing over a Rogue or Vagrant, or Person likely to be a Beggar, from any of the Plantations, being a Native thereof, and if he shall be found begging here, such Master shall forfeit 5 l. for every Rogue, Vagabond or Beggar so brought.

The Constable where he is found begging may cause him to be whipt, and afterwards put on Board any other Vessel, in order to be sent back again.

Sessions

Sessions may settle the Rate of his Passage, Constable, or other Officer, making Oath of his Expence, in taking and punishing such Vagrant, the Justice may order the Payment thereof, and also of the 5 l. by an Order under his Hand and Seal.

Master of a Ship neglecting or refusing to pay it upon Demand, the Justice may by Warrant levy the same by Distress of the Ship and Goods, whilst within the Jurisdiction of the Justice.

But if out of his Jurisdiction, then the Justice's Order for Payment of the Money shall be removed by *Certiorari* into the *King's Bench*; but being filed, the Court may direct Process by *Capias*, *Fieri facias*, or *Elegit*, against the Master or Owner of the Ship.

But the Master may traverse the Justice's Order, entring into a Recognizance of 50 l. to pay the Costs and Charges of the Traverse.

Master of a Ship refusing to take Vagrants on Board, who are to be conveyed to * *Ireland*, as being the last Place of their legal Settlement, being required to take them by a Warrant to him directed from a Justice of Peace of the County where the Ship lieth, forfeits 5 l. to the Use of the Poor of the Parish where the Person lieth for Transportation.
 * *Ile of Man, Silly, Jersey, Guernsey, or any of the Plantations.*

The Form of an Order from the Justice to a Master of a Ship to pay 5 l. for bringing a Beggar from the Plantations.

To J. P. Master of the Ship or Vessel, &c. now lying, &c.

Suffex, ff. **W** Hereas it hath been duly proved before me R. B. Esq; one of his Majesty's Justices of the Peace for the County of, &c. That J. P. Master of the Ship or Vessel, &c. now riding, &c. within the Limits of the County aforesaid, did lately bring into this Realm from * *Virginia*, one R. W. a Vagrant, Native thereof, who since his Landing here hath been apprehended wandering and begging in the Parish of H. in the County of, &c. by Reason whereof the said J. P. hath forfeited the Sum of 5 l. Now I do hereby order the said J. P. to pay, or cause to be paid unto R. O. the Constable of, &c. the said Sum of 5 l. together with 20 s. more, which by the Oath of the said R. O. it appeareth unto me, he did necessarily sustain in apprehending the said R. W. and reconveying him to *Virginia*, from whence he was brought as aforesaid. Given under my Hand and Seal, &c.
 * Or from the *Ile of Man, Ireland, Jersey, Guernsey, Silly, or the Plantations.*

The Condition of the Recognizance.

Recogni-
zance in
40 l.

THE Condition of this Recognizance is such, That whereas T. B. a Vagrant, being lawfully placed as an Apprentice or Servant to the above-bownden R. R. for the Space of seven Years, and is now about to be transported beyond the Seas: If therefore the said T. B. shall be sent and employed, during all that Time, in some of his Majesty's Plantations, or in some British Factory, and there supplied with Necessaries fitting and convenient for his Degree, and shall not be sold to any Alien; but at the End of his seven Years from the Commencement of his said Apprenticeship, shall be absolutely discharged and set at Liberty, then this Recognizance shall be void, otherwise shall remain in full Force and Vertue.

(11.) Fur-
ious and Lu-
natick.

Two Justices may by Warrant cause furious and lunatick Persons to be apprehended and safely locked up, and if necessary, then to be chained, if his legal Settlement was in that County; if not, then such Person shall be sent to the last legal Place of his Settlement, in the same Manner as Vagrants are to be sent (excepting only the Whipping) and there kept lock'd and chain'd.

Two Justices may order the Charges to be defrayed out of the Estate of the Person; and if he hath no Estate, then the Charges, during his Restraining, shall be made by such Ways and Means, as the Poor of such Parish are by the Laws in Being to be provided for.

The Warrant to apprehend a Madman.

To the Constable, &c.

Suffex, ff. **W**HERCAS T. B. a furious and disorderly Person hath been lately seen walking in the Parish of H. &c. to the great Disturbance and Frightning the People there: These are therefore to require you to apprehend the said T. B. and cause him safely to be locked up until he shall be discharged by due Course of Law. And hereof fail not. Given under our Hands and Seals, &c.

(12.) Ma-
ster of a
Ship bring-
ing over a
Vagrant.

The Master of a Ship bringing over a Rogue or Vagrant, or Person likely to be a Beggar, from any of the Plantations, being a Native thereof, and if he shall be found begging here, such Master shall forfeit 5 l. for every Rogue, Vagabond or Beggar so brought.

The Constable where he is found begging may cause him to be whipt, and afterwards put on Board any other Vessel, in order to be sent back again.

Sessions

Sessions may settle the Rate of his Passage, Constable, or other Officer, making Oath of his Expence, in taking and punishing such Vagrant, the Justice may order the Payment thereof, and also of the 5 l. by an Order under his Hand and Seal.

Master of a Ship neglecting or refusing to pay it upon Demand, the Justice may by Warrant levy the same by Distress of the Ship and Goods, whilst within the Jurisdiction of the Justice.

But if out of his Jurisdiction, then the Justice's Order for Payment of the Money shall be removed by *Certiorari* into the *King's Bench*; but being filed, the Court may direct Process by *Capias*, *Fieri facias*, or *Elegit*, against the Master or Owner of the Ship.

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Master of a Ship refusing to take Vagrants on Board, who are to be conveyed to * *Ireland*, as being the last Place of their legal Settlement, being required to take them by a Warrant to him directed from a Justice of Peace of the County where the Ship lieth, forfeits 5 l. to the Use of the Poor of the Parish where the Person lieth for Transportation.

* *Ile of Man, Silly, Jersey, Guernsey, or any of the Plantations.*

The Form of an Order from the Justice to a Master of a Ship to pay 5 l. for bringing a Beggar from the Plantations.

To J. P. Master of the Ship or Vessel, &c. now lying, &c.

Suffex, ff. **W** Hereas it hath been duly proved before me R. B. Esq; one of his Majesty's Justices of the Peace for the County of, &c. That J. P. Master of the Ship or Vessel, &c. now riding, &c. within the Limits of the County aforesaid, did lately bring into this Realm from * *Virginia*, one R. W. a Vagrant, Native thereof, who since his Landing here hath been apprehended wandering and begging in the Parish of H. in the County of, &c. by Reason whereof the said J. P. hath forfeited the Sum of 5 l. Now I do hereby order the said J. P. to pay, or cause to be paid unto R. O. the Constable of, &c. the said Sum of 5 l. together with 20 s. more, which by the Oath of the said R. O. it appeareth unto me, he did necessarily sustain in apprehending the said R. W. and reconveying him to *Virginia*, from whence he was brought as aforesaid. Given under my Hand and Seal, &c.

* Or from the *Ile of Man, Ireland, Jersey, Guernsey, or any of the Plantations.*

The Warrant for levying the 5 l. if not paid on Demand.

To the Constable of, &c.

Sussex, ff. **W** Hereas by an Order under my Hand and Seal, directed to J. P. Master of the Ship or Vessel of, &c. now riding at, &c. within the Limits of the said County; I did appoint the said J. P. to pay unto R. O. the Constable of, &c. the Sum of 5 l. forfeited by the said J. P. for bringing over from Virginia R. W. a Vagrant and Native thereof, into the Kingdom of Great Britain, which said R. W. was afterwards found wandering and begging in the Parish of H. &c. and also to pay 20 s. unto the said R. O. for his necessary Charges in apprehending the said R. W. and reconveying him back again; which said Sum, or any Part thereof, was not paid by the said J. P. being lawfully demanded of him, but the said J. P. did then, and still doth refuse or neglect to pay the same. These are therefore to require you forthwith to levy the said respective Sums of 5 l. and 20 s. by Distress and Sale of the said Ship and the Goods therein, or so much thereof as shall raise the said respective Sums, rendering the Overplus to the said J. P. And hereof fail not. Given under my Hand and Seal, &c.

Or from
Ireland, ife
of Man, &c.

The Form of a Warrant directed to the Master of a Ship to transport a Vagrant to Ireland, the Place of his Settlement, &c.

To J. P. Master of the Ship or Vessel called, &c. now riding, &c.

Sussex, ff. **W** Hereas T. B. a Vagrant, was apprehended, wandering and begging in the Parish of H. in the County of, &c. and upon his Examination and other due Proof, it appeareth unto me, that the last Place of his lawful Settlement was at O. &c. in the Kingdom of * Ireland. I do therefore require you to take the said T. B. on Board your Ship, now riding at, &c. within the Limits of this County, and to transport him from thence into Ireland aforesaid, and for your so doing, this shall be your Warrant. Given under my Hand and Seal, &c.

• Or in any
of the Plan
tations, as
the Case
is.

If the Master of the Ship receives him, the Constable shall pay him so much per Head as the Sessions shall appoint, and the Master must give a Receipt on the Back of the Warrant for the Money paid unto him for Transporting.

But if the Master refuse to take him on Board, he forfeits 5 l. to the Use of the Poor of the Parish where the Person lieth for Transportation.

The

The Form of the Warrant to levy the 5 l. on the Master of a Vessel, refusing to transport a Vagrant.

To the Constable, &c.

Suffex, ff. **W**Hereas by a Warrant under my Hand and Seal, directed to J. P. Master of the Ship or Vessel called, &c. now riding at S. within the Limits of the said County, he was ordered to take on Board his said Ship one T. B. a Vagrant, and to transport him from H. &c. to Ireland, where he was last legally settled, but the said J. P. did, and doth still refuse to take the said T. B. on Board his said Ship; and to transport him to Ireland as aforesaid, by Reason whereof he hath forfeited 5 l. These are therefore to require you forthwith to levy the said Sum of 5 l. by Distress and Sale of the said Ship and Goods therein, or so much thereof as shall raise the said Sum of 5 l. and that you pay the same to the Churchwardens or Overseers of the Poor of the said Parish of H. where the said T. B. now lieth for Transportation, for the Use of the Poor thereof. Given under my Hand and Seal.

By this new Act the Justices of every County in each Division, Riding, City, Liberty, or Town-corporate, or any two of them, may in some convenient Time before the Quarter-Sessions, or oftner if Need be, meet, and by their Warrant command the Constables of every Hundred, Parish, &c. (assisted with sufficient Men of the same Place) to make a general Privy Search in one Night thro' their several Limits, for finding and apprehending Rogues, Vagabonds, and sturdy Beggars, to be brought before them, and to be examined, punished, and passed in the same Manner as Vagrants before-mentioned.

Verdict.

IN Capital Cases, the Jury cannot be discharged before the Verdict is given.

And it must be given openly in Court, for no privy Verdict is allowed in such Cases.

But the Jury may find Matter specially, viz. If the Indictment is for Murder, they may find the Defendant guilty of Manslaughter, Chance-Medley, or *Se Defendendo*; but then they must find in what Manner, that the Court may judge of the Law arising upon the Fact.

Mansell was indicted for Murder. The Foreman of the Jury said he was guilty of Manslaughter; the Rest of the Jury informed the Court, that they did not agree to that Verdict.

Then

Victuallers. Unlawful Assembly.

Then the Court asked *Mansell*, Whether he would be discharg'd of that Jury? He consented, and the Prisoner was tried by another upon the same Indictment, and found guilty of Murder, and had Judgment to be hanged.

The Verdict must be perfect; and therefore if upon the Stat. of 8 H. 6. the Jury find, viz. *Si Domus predict' non fuit in possessione Dom' Reg'* then *Billa vera*; and this is void, for it is a conditional Verdict:

There is no Necessity of finding the Value of any Thing as laid in the Indictment: More they cannot find, but less they may.

Victuallers and Victuals.

ALE-house-keeper,
Baker,
Brewer,
Butcher,

Cook,
Fishmonger,
Innkeeper,
Poulterer,

Or any other Seller of Victuals, if they sell at unreasonable Rates, they lose double the Value.

If they conspire or make an Agreement together to sell at no other Prices but what they agree on; the first Offence is 10 l. or twenty Days Imprisonment; the second Offence is 20 l. or the Pillory; the third Offence 40 l. or Loss of one Ear. 2 Ed. 6. cap. 15.

To sell Swines Flesh meazled, or any Flesh that died of the Murrain, or other corrupt Victual, is finable. Statute *de Pistoribus*, 51 H. 3. cap. 3.

Unlawful Assembly.

THIS is where three or more disorderly Persons meet to commit an unlawful Act, as to beat a Man, &c.

The very Meeting to do such an Act is an unlawful Assembly, tho' they depart without doing it.

It differs from a Rout; for that is such a Meeting, and moving from the Place where they first met, towards the putting the Act in Execution, whether 'tis afterwards done or not; and it differs from a Riot, for that is such a Meeting and actually putting the Thing in Execution.

But two Things must concur in unlawful Assemblies, Riots and Routs, that is, there must be three Persons or more meeting together, and there must be some apparent Disturbance of the Peace, either by Speaking, Shew of Weapons, or turbulent Gestures, or some actual Violence to disturb peaceable Men.

The old Books tell us, there are three Degrees of unlawful Assemblies; the first is from three disorderly Men to twelve; the second is of twelve or more; the third of forty or upwards.

A Justice of Peace may command a sufficient Force to suppress such Assemblies, and to apprehend the Offenders; and if any of them should be hurt or wounded in making Resistance, the Person so wounding, &c. is not to be punished; so careful were our Ancestors to suppress all disorderly and tumultuous Meetings at the very Beginning, before they formed themselves into a Body.

Wages.

OF Artificers, Servants and Labourers, &c.

		l.	s.	d.
Apprentices,	{ Of all Artificers.	In Summer per Day	— 00	00 10
		With Meat	— 00	00 05
		In Winter per Day	— 00	00 08
		With Meat	— 00	00 04
Arrow-head-makers,	{ His Servant per Ann.	— 03	00	00
Baker,	{ His Setter, Seasoner and Furner per Ann.	— 04	10	00
	{ His common Servant per Ann.	— 03	00	00
Blacksmith,	{ Best Servant per Ann.	— 04	00	00
	{ Common Servant per Ann.	— 03	00	00
Bowyer,	{ Best Servant per Ann.	— 04	00	00
	{ Common Servant per Ann.	— 03	00	00
Brewer,	{ Head Brewer per Ann.	— 05	00	00
	{ Common Servant per Ann.	— 04	00	00
Bricklayer,	{	In Summer per Day	— 00	01 06
		With Meat	— 00	00 09
		Winter per Day	— 00	01 04
		With Meat	— 00	00 06
Brickmaker,	Per Thousand	— 00	04	00
Butcher,	His Servant per Ann.	— 04	00	00
Carpenter,	{	From Easter to Michaelmas per Day	— 00	01 08
		With Meat	— 00	00 10
		In Winter, from Michaelmas to Easter per Day	— 00	01 06
		With Meat	— 00	00 09

Wages.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
Carver,	{ In Summer <i>per</i> Day, and Winter —	00	01	08
	{ With Meat —	00	00	10
	{ Servant —	00	00	08
	{ With Meat —	00	00	04
Clothier,	{ His Foreman <i>per Ann.</i> —	05	10	00
	{ Common Servant —	04	10	00
Coaling,	{ Carrying four Cords of Wood to	00	04	08
	{ Heath, and covering and coal-			
	ing in it —			
Cook,	— His Servant <i>per Ann.</i> —	04	10	00
Cooper,	{ His best Servant <i>per Ann.</i> —	04	00	00
	{ His second Servant —	03	00	00
Currier,	{ His best Servant <i>per Ann.</i> —	03	10	00
	{ Common Servant —	03	00	00
Cutler,	{ His Foreman <i>per Ann.</i> —	03	10	00
	{ Common Servant —	03	00	00
Dyer,	{ His Wringer and Under-Dyer <i>per</i>	06	00	00
	<i>Ann.</i> —			
Ditching,	{ Out of the whole Ground 4 Foot	00	00	08
	{ wide, two Foot deep, and one			
	{ Foot in at Bottom, <i>per</i> Rod —			
	{ If nine Foot wide, four Foot deep,	00	01	06
	{ and four Foot in the Bottom, <i>per</i>			
	{ Rod —			
	Cleaning them, half that Price.			
Faggots, Farrier, Fletcher,	{ <i>Per</i> Hundred making —	00	00	10
	{ See in <i>Blacksmith</i> , same Wages.			
	{ See in <i>Bowyer</i> .			
Glasier,	{ In Summer <i>per</i> Day —	00	01	04
	{ With Meat —	00	00	08
	{ In Winter <i>per</i> Day —	00	01	02
	{ With Meat —	00	00	07
Glover,	{ His Water-man <i>per Ann.</i> —	05	00	00
	{ His common Servant —	03	10	00
Harvest-men (See Servant)	{ From the Beginning to the End —	02	15	00
	{ Best Servant <i>per Ann.</i> —	04	00	00
Hatter,	— Common Servant <i>per Ann.</i> —	03	00	00
Hedging,	— <i>Per</i> Rod —	00	00	02
Hop-pickers,	— <i>Per</i> Day —	00	00	06
Hosier,	— <i>Per Ann.</i> —	04	00	00

Joiner.

Wages.

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		<i>l.</i>	<i>s.</i>	<i>d.</i>
Joiner,	{ Per Day in Summer and Winter	00	01	08
	{ With Meat	00	00	10
	{ Servant	00	01	00
Labourer,	{ With Meat	00	00	07
	{ By the Day in Summer	00	01	02
	{ With Meat	00	00	07
	{ By the Day in Winter	00	00	10
Lath-clearer--	{ With Meat	00	00	05
	Per Hundred	00	00	04
Lime-burner--Per Ann.		04	00	00
Mason,	{ Free-Mason in Summer per Day	00	01	08
	{ With Meat	00	00	10
	{ In Winter per Day	00	01	06
	{ With Meat	00	00	09
Miller,	{ His Grinder per Ann.	04	00	00
	{ Loader per Ann.	03	00	00
Milner,	{ His best Servant per Ann.	04	00	00
	{ Common Servant	03	00	00
Mill-wright,	{ In Summer per Day	00	02	00
	{ With Meat	00	01	04
	{ In Winter per Day	00	01	08
	{ With Meat	00	00	10
Mowers,	{ By the Day	00	01	04
	{ With Meat	00	00	09
	{ By the Acre, Grass	00	10	08
	{ Oats or Barley per Acre	00	01	00
Painigl,	{ By the Rod, with one Rail even	00	00	08
	{ headed			
Pewterer,	{ Uneven-headed	00	00	05
	{ His Fore-man per Ann.	04	00	00
Plasterer,	{ Other Servant	03	00	00
	{ In Summer per Day	00	01	06
	{ With Meat	00	00	09
	{ In Winter per Day	00	01	04
Ploughman,	{ With Meat	00	00	08
	{ Head-Ploughman per Ann.	05	00	00
	{ His Under-Ploughman per Ann.	03	00	00
Plumber,	{ Boy, from 14 to 18, per Ann.	02	00	00
	{ In Summer per Day	00	01	08
	{ With Meat	00	00	10
	{ With Winter per Day	00	01	04
Potter.	{ With Meat	00	00	08
	{ His Servant per Ann.	04	00	00

		l.	s.	d.
Railing,	{ By the Rod, single Rail	00	00	02
	{ Double Rail	00	00	04
Reaping,	{ By the Day	00	02	00
	{ With Meat	00	01	00
	{ Woman per Day	00	01	00
	{ With Meat	00	00	06
	{ By the Acre	00	04	00
Sadler,	{ His best Servant	04	00	00
	{ Common Servant	03	10	00
Sawyers,	{ By the Day, the same as Bricklayers.			
	{ By the Hundred, Oak-Boards	00	02	06
	{ Elm or Ash	00	02	04
	{ Slitting	00	02	08
Servants,	{ Best Man-Servant per Ann.	05	00	00
	{ Second Sort per Ann.	03	00	00
	{ Other Sort per Ann.	02	00	00
	{ Best Woman-Servant per Ann.	03	00	00
	{ Second Sort	02	00	00
	{ Other Sort	02	00	00
	{ Servants in Harvest with Meat	01	15	00
	{ Second Sort in Harvest	01	10	00
	{ With Meat	00	10	00
Shoemaker,	{ Best Servant per Ann.	03	10	00
	{ Other Servant	02	10	00
Sheerman,	— Per Ann.	04	00	00
Shipwright,	{ Master Hower per Day	00	02	00
	{ With Meat	00	01	04
	{ Clencher per Day	00	01	08
	{ With Meat	00	00	10
	{ Cawker per Day	00	01	06
	{ With Meat	00	00	09
	{ Mean per Day	00	01	04
	{ With Meat	00	00	08
Spurrier,	— His Servant per Ann.	03	00	00
Tanner,	{ His Market-man per Ann.	05	10	00
	{ Other Servant	03	00	00
Taylor,	{ His Fore-man per Ann.	03	10	00
	{ Sewer per Ann.	03	00	00
Thatcher,	{ In Summer per Day	00	01	06
	{ With Meat	00	00	09
	{ In Winter per Day	00	01	04
	{ With Meat	00	00	08
	{ By the Hundred with Reed	00	00	08

Thatcher,

Wages.

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		l.	s.	d.
Thatcher,	{ His Man <i>per</i> Day in Summer ———	00	01	00
	{ With Meat ———	00	00	06
	{ In Winter <i>per</i> Day ———	00	00	10
	{ With Meat ———	00	00	05
Thrasher,	{ Wheat by the Quarter ———	00	01	08
	{ With Meat ———	00	00	10
	{ Oats and Barley ———	00	01	00
	{ With Meat ———	00	00	06
Tilemaker,	{ His Servant <i>per</i> Thousand ———	00	01	08
	{ With Meat ———	00	00	10
	{ For Ridge-Tile <i>per</i> Hundred ———	00	02	06
	{ For Corner and Gutter-Tile <i>per</i> Hundred ———	00	02	00
Tiler,	—The same with Sawyer <i>per</i> Day.			
Tucker,	— <i>Per Ann.</i> ———	03	00	00
Turner,	— <i>Per Ann.</i> his Servant ———	04	00	00

By the Stat. of 39 Eliz. cap. 12. & 1 Jac. cap. 6. the Rates of Wages both of Servants and Labourers are to be assessed by the Justices in their Sessions every *Easter*.

And by 5 Eliz. cap. 4. he who giveth greater Wages forfeits 5 l. and may be committed for ten Days without Bail; and he who taketh more, being convicted before two Justices, shall be committed 21 Days without Bail.

See the Warrants for Wages in the Title Apprentices.

An Indictment lies for giving more Wages than assessed by the Justice.

A Servant complained to the Sessions that her Master would not pay her Wages, and on hearing both Sides, the Sessions referred it by Agreement to Sir T. L. and made an Order of Reference by Consent; afterwards Sir T. L. made an Award, and upon a *Certiorari* brought, adjudged that the Sessions cannot by the Consent of the Parties make an Order of Reference of a Thing to be determined by another, tho' they may make an Order of Reference to examine and report.

An Order to pay 40 s. generally for Wages, without saying for what Wages; and the Justices have Power only to settle Wages in Husbandry: Adjudg'd upon a Motion to quash this Order, that it shall be intended for Wages in Husbandry, since the Contrary doth not appear.

Order that W. R. should pay to W. W. so much Money for Mod. Cases Labour and Work done, without saying that W. W. was his Servant, quashed, for it doth not appear but that the Work done might be Carpenters Work or any other Trade.

Z z 3

Order

Jones 47.

Order to pay his *Coachman's Wages*, quashed, because the Statute 5 *Eliz. cap. 4.* doth not extend to *Coachmen* or any other Servants but in Husbandry.

Mod. Cases
204.

Order, &c. reciting that *W. R.* and *W. R.* were retained by one *London* the King's Gardener at *Hampton Court* at so much *per Diem*, to work in the King's Garden there, and that they worked there so many Days, and that so much was due to them, which *London* was ordered to pay: This Order being removed from *Hicks's Hall* was quashed, for the Justices have only Power to enforce the Payment of *Wages in Husbandry*, because they have Power by the Statute to settle such Wages. 'Tis true, where an Order is for Payment of *Wages generally*, it shall be intended *Wages in Husbandry*, but upon the Face of this Order it appears to be otherwise.

Warrants. See Constable.

Concern-
ing the
Warrant
itself

THIS is a Precept in Writing under the Hand and Seal of the Justice of the Peace.

It ought to contain the Cause, and therefore a Warrant to answer such Things as shall be objected, without mentioning any Thing in particular, is not good. This is the Opinion of my Lord Coke. 2 *Inst.* 591.

If any Person abuses the Warrant, as by throwing it in the Dirt, or treading it under Foot, or not executing it, 'tis a Contempt of the King's Process, and he shall be indicted and fined.

The Justice ought not to grant a *Blank Warrant*, for this is finable; nor a Warrant for Felony, without examining the Person who required it, upon Oath, and binding him over to give Evidence.

The Of-
ficer.

This being the Person to whom it is directed, he ought to execute it with all convenient Speed; and if 'tis a Warrant for the Peace or good Behaviour, he may break open the Doors.

Upon arresting the Party he need not shew his Warrant, but he ought to declare the Contents of it.

If he is resisted or assaulted, he may justify the Beating and Wounding, &c.

If after the Arrest the Officer lets his Prisoner go, upon his Promise to return or appear, he cannot retake him upon the first Warrant, because it was executed; but if the Prisoner escape, he may take him upon a *fresh Pursuit* without a new Warrant.

If a Justice grants a Warrant in Cases beyond his Authority, the Officer must obey; but if it be where he hath no Jurisdiction, or in a Case where he is not properly a Judge, if the Officer executes such Warrant, he is punishable.

As

As if a *Poor Rate* is illegally assessed, and afterwards levied by a Warrant from the Justice, &c. this will not excuse the Churchwardens. *Cro. Car.* 394.

Where a particular Person who hath an Authority to act, commits a Mistake in any Thing which is in his Power or Jurisdiction, in such Case the Officer will be excused for executing it; but where he exceeds his *Authority*, all is void, because it is limited.

If the Warrant is *general*, viz. To be brought before the Justice, who grants it, or any other Justice, &c. the Constable, who is the Officer and Minister of Justice, may carry the Party before any Magistrate, because he is presumed to be an indifferent Person, and sworn to execute his Office duly, and therefore 'tis reasonable that the Election should be in him. *5 Rep. Foster's Case.*

It was the Opinion of my Lord Chief Justice *Wray*, That the Justice, &c. may grant a Warrant to bring the Person before himself, because he who hath taken the Examination is most fit to do Justice.

If the Warrant is to apprehend *A. B.* and there are several of that Name, and the wrong Person is arrested, an Action of false Imprisonment lies. Where the Officer is liable to false Imprisonment.

If after the Arrest the Officer procures a Warrant, having none before; this is a wrongful Taking, and the Officer is liable to the Action. *Dyer* 244.

If a Warrant is granted to take *R. N.* the Son of *T. N.* and the Officer arrests *R. N.* the Son of *W. N.* tho' he is the Offender, yet it is false Imprisonment, because he had no Warrant against such a Person. *Quere.*

By the Common Law, if an Action of false Imprisonment had been brought against an Officer for arresting another upon Suspicion of Felony, it was no Plea for him to say, That the Person was *suspected*, but he must alledge in Fact, That a Felony was committed, and that the Plaintiff was suspected thereof; and he must likewise alledge some special Matter to induce a Belief of such Suspicion, as that the Plaintiff is a Man of no Credit, &c. and he must likewise plead, that the Defendant himself had a Suspicion of him.

But this is now remedied by the Stat. of 7 Jac. 5. by which the Constable may plead the general Issue, and give the special Matter in Evidence; which, together with the Warrant, will be a sufficient Excuse for him.

Indictment for not executing a Warrant. See Constable.

Watch.

IN Walled Towns, the Gates ought to be shut from Sun-set to Sun-rising, and none shall lodge in the Suburbs except the Host will answer for him. 5.H. 4. cap. 5. 5 Ed. 3. cap. 5.

Any Justice may cause the Watch to be set; but no Man is compellable to watch, unless he is an Inhabitant in the Town.

Any suspected Person passing by the Watch at unseasonable Hours, may be examined by the Watchmen; if they refuse, they may justify the Apprehending them and Securing them till the Morning, and may then discharge them, or deliver them to a Constable to carry before a Justice of Peace, as they shall see Cause.

If a Person who ought to watch, and is commanded by the Constable so to do, refuseth, 'tis a Question whether he may put him in the Stocks; but he may complain to a Justice of Peace, who may bind the Offender over to Sessions, or the Constable may present him there. Cro. Eliz. 204. 3 Leon. 208. the same Case.

An Indictment for not Watching.

Middl' ff. **J**ur', &c. quod R. O. nuper de Paroch' Santi Martini in Campis in Com' Middl' Labourer, 14 die Aprilis, Anno, &c. & diu antea fuit Inhabitans in Paroch' pzed' quodque idem R. O. adtunc & ibidem scil' pzed' 14 die Aprilis, Anno supradicto debito modo summonitus fuit ad vigiland' cum Constabulario in Paroch' pzed' in nocte ejusdem diei pzed' tamen R. O. debitum suum in hac parte negligens in pzed' nocte ejusdem diei Anno supradicto vel in aliqua parte ejusdem noctis non vigilabit cum pzed' Constabulario apud Paroch' pzed' in Com' pzed' sed hoc facere adtunc & ibidem neglexit & voluntarie & obstinate default' fecit in contemptum dicti Dom' Reg' nunc & legum suar' & contra pacem dicti Dom' Reg' nunc Cozon' & dignitat' suas.

A Warrant by Order of Sessions to keep Watch and Ward.

To the Constable and Headborough of the Hundred of L.

Suffex, ff. **W** Hereas several Robberies, Felonies and other Crimes have been lately committed in the County aforesaid; it was therefore ordered at the last General Quarter-Sessions of the Peace, held at L. for the said County, That Watch and Ward be duly set and kept in all and every usual Place and Places within your Hundred. You are therefore to take Care, that the same be done pursuant to the said Order; and you are likewise to apprehend all idle and suspicious Persons, and bring them before us, or some other of his Majesty's Justices of the Peace for the said County, in Order to proceed against them according to Law. And hereof fail not at your Perils. Given under our Hands and Seals, &c.

A Mittimus to the House of Correction of one apprehended by the Watch.

To the Keeper of the House of Correction,

Suffex, ff. **W** Hereas R. O. was this present Day brought before me H. P. Esq; one of his Majesty's Justices, &c. the said R. O. being taken last Night by the Watch, set by the Constable of, &c. and charged with wandering abroad at unseasonable Times of the Night, and also with other disorderly Behaviour: These are therefore to require you to take the said R. O. into your Custody, and him safely to keep, until he shall be delivered by due Course of Law from thence, and in the mean Time to make him labour, allowing him such Maintenance as he shall earn thereby; and you are to punish him as by Law is required. You are likewise to bring him to the next Quarter-Sessions, &c.

Weaver.

HE who useth the Trade of Cloth-worker out of a City or Borough, must keep but one Loom in his Possession, or make any Profit by letting out a Loom; Forfeiture is 20 s. 2 & 3 Phil. & Mar. cap. 11.

But a Woollen Weaver living out of a City, &c. shall keep two Looms, and no more; like Penalty.

Weers. Weights and Measures.

A *Weaver* who is not a *Cloth-worker*, shall not keep a Tuck-
ing-Mill, or use the Trade of *Tucker*, *Fuller* or *Dyer*; forfeits
20 s. per Week.

A *Fuller* or *Tucker* shall not keep a Loom, or make any Pro-
fit thereby, under the like Penalty.

Weers.

WEEERS in Rivers may be viewed by one Justice, and
may cause them to be made wider.

Making *Weers* within five Miles of the Mouth of any Haven
or Creek, or making them to destroy any Fry of Fish of the
Sea, forfeits 20 l. to the King and Informer. 3 Jac. cap. 12.

Weights and Measures.

THERE are two Sorts of Weights, { 1. *Troy Weight*.
2. *Averdupois*.

Troy Weight hath 12 Ounces to the Pound,
and by this are weighed,

Bread.
Gold.
Pearl.
Jewels.
Silks.
Silver.
Wheat.

Averdupois hath 16 Ounces to the Pound;
and by these are weighed,

Butter.
Cheese.
Drugs.
Flesh.
Flax.
Grocery.
Hemp.
Iron.
Steel.
Lead.
Pitch.
Tar.
Tallow
Wax.
Wool.

These

These, and all Commodities which are garbled, and of which any *Refuse* is made, are weighed by *Averdupois* Weight, and to every Hundred there is an Allowance of 12 Pounds, and so *pro Rata*.

The Bushel must contain eight Gallons, or sixty-four Pints of Wheat, and must be kept sealed in every City, Borough or Town. 11 H. 6. cap. 8. 31 Ed. 1. 12 H. 7.

Eight Bushels make a Quarter of Corn striked, 15 R. 2. cap. 4. The Standard of Bushels, Gallons and Ells must be signed with an Iron Seal of the King's; and if any sell or buy with Measures unsealed, he shall be amerced. 31 Ed. 1. the Statute *de Pistoribus*.

This Standard must be kept by the Mayor or Bailiffs of the Town, and six Persons must be sworn, before whom all Measures must be sealed. 31 Ed. 1.

Every Measure must be according to this Standard, and shall be striked, and not heaped. 25 Ed. 3.

Gallons.

Tun of Wine is	—252	}	
The Pipe is	—126		
Barrel of Herrings	—30		
But of Salmon	—40		
			2 H. 6. cap. 11.
			1 Ric. 3. cap. 13.

Vessels made contrary to that Statute, the Owner forfeits the Commodities therein contained to the Lord of the Town where found, but the Prosecutor must have a fourth Part.

Justices of Peace have Power to hear and determine the Offences.

Every City, Borough and Town must have a common Balance, and sealed Weights, in the keeping of the Head-Officer, or Constable there, otherwise the City forfeits 10 l. the Borough 4 l. and the Town 40 s. to the King.

Justices of the Peace have Power to hear and determine these Offences. 8 H. 6. cap. 5.

The Mayor shall have 1 d. for *Sealing* a Bushel, and for every other Measure a Half-penny.

If he refuse or delay to *seal*, he forfeits 40 s. to be divided between King and Party grieved. 7 H. 7. cap. 4.

Two Justices (*Quorum unus*) have Authority as well by Examination as by Enquiry, to hear and determine Faults of Mayors and Head Officers, and of Buyers and Sellers otherwise than by the Standard, and set Fines at Discretion; defective Weights and Measures are forfeited, and must be burnt. 11 H. 7. cap. 4.

But now by the Statute of 22 Car. 2. cap. 8. 'tis prohibited to sell Corn, Grain or Salt otherwise than by the Standard, and the *Bushel* must be *struck even with the Brim*, and sealed: The

Forfeiture

Weights and Measures.

Forfeiture for every Offence is 40 s. the Conviction to be by Oath of one Witness before one Justice, Mayor or Head-Officer, and it must be levied by a Warrant directed to the Churchwardens and Overseers of the Poor, for the Use of the Poor of the Parish where the Offence is committed; and if no Distress can be had, the Party may be committed without Bail till he pay the Penalty.

If Head Officers of Cities, Boroughs or Corporations suffer any Person to sell or buy by other Measure, and if upon Complaint do not punish the Offenders, then if they are convicted at Sessions, they forfeit 5 l. to the Poor and Informer; and if no Distress can be had, they may be committed till Payment.

Constables may search and examine if any Person use other Measures, &c. and if they find any unsealed, may break them, and may present the Offender at the next Quarter-Sessions.

By 22 & 23 Car. 2. cap. 13. buying or selling Corn or Salt without Measuring (if required) or in any other Manner than is directed by the former Acts of 22 Car. 3. forfeits, besides the 40 s. all the Corn or Salt, or the Value thereof, to the Person grieved; and upon Complaint to one or more Justices of the Peace, the Proof shall lie upon the Person accused, who must make it appear by Oath of one Witness, That he did buy or sell according to this and the former Statute.

If he fail in such Proof, he forfeits all the Corn or Salt, or Value thereof, which is to be divided between the Informer and Poor where the Offence is committed.

This is to be levied by Warrant from one or more Justices, &c. before whom convicted.

A Warrant to levy the Penalty for selling heaped Measure without striking the Bushel.

To the Churchwardens and Overseers of the Poor of the Parish of, &c.

12 Car. 2.
cap. 8.
One Ju-
stice.
One Wit-
ness on
Oath; per
17 Car. 2.
cap. 19.

Suffex, ss. **W** Hereas R. O. of, &c. hath been duly convicted before me, for that on the 17th Day of April last past, in the Parish of H. aforesaid, he did sell Corn in a Bushel heaped with the same, and not stricken even by the Wood or Brim thereof, as by Law he ought; for which Offence he hath forfeited 40 s. These are therefore to require you forthwith to levy the Sum of 40 s. upon the Goods and Chattels of the said R. O. by Distress and Sale thereof; and that you employ the same to the Use of the Poor of the said Parish of H. where the said Offence was committed: And hereof fail not. Given under my Hand and Seal, &c.

Another

Another Warrant to levy the Value of the Corn sold, besides the 40 s.

To the Constable and Headborough of, &c. and to the Churchwardens and Overseers of the Poor of the Parish of H.

Suffex, ff. **W** Hereas Complaint hath been made unto me, That ^{22 & 23} R. O. of, &c. did on the 17th Day of April last ^{Car. 2. cap.} ^{12.} past, in the Parish of H. in the said County, sell Corn by a Bushel not agreeable to the Standard marked in his Majesty's Exchequer, commonly called Winchester Measure (or that the Buyer did shake the Bushel, or that the Bushel was unsealed, or that it did not contain eight Gallons, as the Case is.) And whereas the said R. O. hath failed to prove before me by the Oath of one or more credible Witnesses, That he did sell (or buy, as the Case is) the same by a Bushel agreeable to the said Standard (or as the Case is) and thereupon he stands legally convicted of the said Offence: These are therefore to require you forthwith to seize the said * Corn, the same being * If that forfeited, and that you distribute one Half thereof to the Poor of the said Parish of H. where the said Offence was committed, and the other Half to R. P. of the Parish of, &c. who informed me thereof: And hereof fail not. Given under my Hand and Seal, &c. ^{cannot be had, then the Value thereof.}

An Indictment against a Mayor for suffering any other Measure to be used.

Suffex, ff. **J**UR', &c. quod quidam W. B. Major & Capitalis ^{22 Car. 2.} ^{cap. 8. For-} ^{feiture 5 l.} ^{to Informer} ^{and Poor.} ^{Conviction} ^{must be} ^{upon In-} ^{dictment} ^{at Sessions.} ^{12.} Officiar' Burgi de L. in Com' pzed' 13 die Aprilis, Anno Regni, &c. scienter & voluntarie permittit quendam R. H. infra limites Burgi pzed' & infra Jurisdictionem pzedat' W. B. adtunc Major & Capitalis Officiar' Burgi pzed' erissen' vendere duas Quarterias tritici apud L. pzed' in Com' pzed' mensurati per modium non congruen' (Anglice not agreeable) exagio signat' in Scaccario pzedat' Dom' Reg' communiter vocat' the Winchester Measure, contra formam Stat' in hujusmodi casu edit' & provis. & contra Pacem, &c.

The like Indictment (*mutatis mutandis*) for suffering Corn or Salt to be bought or sold in a Bushel not stricken by the Brim; or if upon Complaint he shall not punish or reform those who offend in these Cases.

The Forfeiture is 5 l. for every Offence; the Conviction must be by Indictment, or Presentment at Sessions, and then to be levied by Distress and Sale of the Goods of the Offender; and

Weights and Measures.

and if that cannot be had, then he may be committed till 'tis paid; but there must be two Justices at least to sign the Warrant of Commitment.

Indictment against the Clerk of the Market, or against a Mayor, for taking excessive Fees for sealing Weights, &c.

* 'Tis but
one Penny,
per Stat.
22 Car. 2.

Suffex, ff. **J**ur', &c. quod R. H. de L. in Com' pzedict' Clericus mercati in & pzo L. pzed' 19 die Aprilis Anno Regni, &c. apud D. pzedict' * quatuor denarios pzo sigillatione cujusdam mesure (vocat' a Bushel) de quodam W. B. coloze officii sui pzed' R. H. tunc Clericus mercati pzed' existen' injuste & extortiose cepit contra formam Statut' in hujusmodi casu edit' & pzo vis. & contra Pacem, &c.

The like Indictment may be (*mutatis mutandis*) for neglecting or refusing (being required) to seal, &c. Forfeiture for the first Offence 5 l. and for the second Offence 10 l.

Things are numbred after this Manner:

Barrel contains	{	256 Pints,	{	This Vessel being empty, should weigh 26 Pounds. per 23 H. 8. cap. 4. Ale-Barrel contains 32 Gallons: Beer-Barrel 36 Gallons. Per 1 W.
		128 Quarts,		
		32 Gallons,		
		4 Firkins,		
		2 Kilderkins,		
		4 Bushels,		

Barrel(Half)	{	16 Gallons.	{	This Vessel being empty, should weigh 13 Pounds, per 23 H. 8. cap. 4.
		2 Firkins.		

Beef ——— A Pound is 16 Ounces *Averdupois*.

Bushel is	{	64 Pints.	{	See 31 Ed. 2. 12 H. 7.
		32 Quarts.		
		8 Gallons,		
		4 Pecks,		

Butter ——— Must be measured as Soap. 14 Car. 2. cap. 26.

Clove ——— Is 8 Pounds *Averdupois*.

Coals ——— A Sack is three Bushels.

Coom ——— The same with Barrel.

Ell ——— Is three Foot nine Inches.

Fathom

Weights and Measures.

719

Fathom — Is seven Foot.

Flesh — A Pound is 16 Ounces.

Firkin { 64 Pints,
32 Quarts,
8 Gallons,
4 Pecks, } This Vessel being empty, must weigh 6 Pounds and an half.
23 H. 8. cap. 4.
Of Beer, is 9 Gallons. } Statute
Of Ale, is 8 Gallons. } 1 Will.

Foot — Is 12 Inches.

Furlong — Is 40 Poles in Length.

Gallon is { 8 Pints.
4 Quarts.
2 Pottles.

Handful — Is 4 Inches.

Hemp — 20 Pounds make a Stone. 21 H. 8. cap. 12.

Herrings. { A Barrel must be 32 Gallons. 13 Eliz. cap. 11.
If sold by Tale, then 120 goes to the Hundred.

Hide of Land — Was 100 Acres formerly, now 80 Acres.

Hides of Leather. { Dicker is 10 Hides.
20 Dickers is a Last, or 200 Hides.

Hogshead is { 512 Pints,
256 Quarts.
64 Gallons.
8 Firkins.
4 Kilderkins,
2 Barrels,
8 Bushels, } Of Wine, Oil or Honey, is 63 Gallons.

Hops — 112 Pounds make the Hundred.

Kilderkin or { 16 Gallons. } Of Ale, is 16 } Gallons.
Half Barrel, { 2 Firkins. } Of Beer, 18 }

Last — Is ten Thousand.

Laths must be { 5 Foot in Length.
2 Inches broad.
Half an Inch thick.

Mile is

Mile is $\left\{ \begin{array}{l} 8 \text{ Furlongs.} \\ 220 \text{ Perches or Poles.} \\ 1056 \text{ Paces.} \\ 1409 \text{ Ells.} \\ 1760 \text{ Yards.} \\ 5280 \text{ Foot.} \\ 63360 \text{ Inches.} \end{array} \right.$

Nails ——— 120 make the Hundred.

Oxgang ——— Is 13 Acres.

Paper. $\left\{ \begin{array}{l} 10 \text{ Reams, or } 200 \text{ Quires, make a Bale.} \\ \text{Ream is } 20 \text{ Quires or } 500 \text{ Sheets.} \\ \text{Quire is } 25 \text{ Sheets.} \end{array} \right.$

Parchment — A Roll is five Dozen; or 60 Skins.

Peck ——— Is 8 Quarts.

Perch ——— The same with Pole.

Pins ——— 120 make the Hundred.

Pipe ——— Is 126 Gallons of $\left\{ \begin{array}{l} \text{Wine.} \\ \text{Oil.} \\ \text{Honey.} \end{array} \right.$

Plow-Land — The same with Hide of Land.

Pole ——— Is 16 Foot and an half.

Pottle ——— Is two Quarts.

Quart ——— Is two Pints.

Quarter of $\left\{ \begin{array}{l} 8 \text{ Bushels} \\ \text{Corn is } \left\{ \begin{array}{l} \text{stricken.} \end{array} \right. \end{array} \right. \left\{ \begin{array}{l} \text{See } 11 \text{ H. } 7. \\ 25 \text{ Ed. } 3. \text{ cap. } 10. \\ 34 \text{ Ed. } 3. \text{ cap. } 6. \end{array} \right.$

Rod *alias* Rood — The same with Pole.

Rundlet is $\left\{ \begin{array}{l} 16 \text{ Gallons,} \\ 2 \text{ Firkins,} \end{array} \right. \left\{ \begin{array}{l} \text{Of Wine, Oil and Honey; but of} \\ \text{the last, 'tis sixteen Gallons and} \\ \text{an half.} \end{array} \right.$

Soap ——— Must be of the Measure as Ale is.

Stone ——— Is eight Pounds.

Tiles ——— 120 make the Hundred.

Timber ——— Hewed and squared, 50 Foot is a Load.

Tun is———252 Gallons of { Wine,
Oil or
Honey.

Weigh { Of Cheefe, in *Suffolk* is 250 Pounds: In *Essex*,
300 Weight, after the Rate of 112 lb. to the
Hundred.

Wool { A Stone is 14 Pounds.
Tod is 28 Pounds.
Sack is 26 Stone, 11 H. 7. cap. 4.
Or 364 Pounds.
Weigh is 182 Pounds, or six Tod and an Half.

Yard———Is three Foot.

Yard-Land——Is either 20, 24 or 30 Acres.

Mr Dalton makes a *Quere*, Whether Bakers shall be amerced Baker, after an Indictment and Conviction for breaking the Assize of Bread? Or whether the *Justices of Peace* have Power to take away unlawful Bread, and give it amongst the Poor? As Officers in Corporate Towns usually do.

'Tis true, by the Statute of 12 Ed. 4. cap. 8. the Justices of Peace have no Authority in this Matter, for by that Statute none but *Mayors, Bailiffs or Lords of Leets*, have Power of correcting those Offenders, which is by *Pillory*.

And this might be the Reason why the Justices of Peace in *Middlesex*, Anno 7 Car. as Mr. Dalton likewise tells us, made an Order to stay all Proceedings upon Indictments preferred against Bakers, because they doubted whether the Sessions had any Jurisdiction to hear and determine this Offence.

The Punishment is by *Pillory*, as aforesaid, and therefore in every Market-Town and Leet there ought to be a Pillory, and in Default thereof, the Lord of the Leet, or the Owner of the Market, may be fined

But for selling by *false Weights and Measures*, an Indictment will lie, notwithstanding a Punishment is appointed by the Statutes above-mentioned in another Method, because this was an Offence at Common Law. See more in Title *Indictments* as to this Matter.

But now by a new Act, the Lord Mayor and Court of Aldermen in *London*, and the Mayor or Chief Magistrates of any other City, Town or Borough, or two Justices, where no such Magistrates are, shall set the Assize and Weight of all Bread to be sold, having Respect to the Price the Grain, Meal or Flour bear in the publick Market there, and making reasonable

8 Anna;
cap. 13.

Continued
by 1 G.

c. 25. for
3 Years,
&c.

Weights and Measures.

sonable Allowance to the Bakers for their Charges, Pains and Livelihood, and such Assize to be in *Averdupois* Weight.

And that the Assize may the more easily be ascertained no Person shall make for Sale, or sell or expose any Sort of Bread other than White, Wheaten and Houshold, and such other Sorts as shall be publickly licensed by the said Court, or Mayor, Magistrate or Justices, within their respective Jurisdictions; which Sorts shall be made in their several Degrees, according to the Goodness of the several Sorts of Grain, of which the same ought to be made; and Assize of White, Wheaten and Houshold, to be according to the Table *infra*.

This Clause And Bakers are to imprint on their Loaves the Sort, Price
repealed by and Weight thereof, or make such Mark thereon, as shall
1 G. c. 25. be appointed by the said Magistrates or Justices, who have Power to appoint how, and in what Manner each Sort shall be marked, thereby to know the Baker or Maker, Price, Weight and Sort, and to make other reasonable Rules for regulating Baking.

And Baker not observing the said Assize, or breaking such Rules, or infringing any of the Matters hereby appointed, and thereof convicted by Confession or one Witness before such Mayor, one Alderman, Magistrate or one Justice, if no Mayor, &c. in Places where the Offence was committed, or Offender apprehended, forfeits for each Offence 40 s. to be levied by Distress by Warrant from such Mayor, Alderman, &c. to be to the Informer. And such Conviction to be certified to the next Quarter-Sessions, to be kept on Record by the Clerk of the Peace and seen without Fee.

But no such Conviction to be, unless the Prosecution be within three Days after the Offence. And an Appeal lies to the Quarter-Sessions, where the Determination is to be final; and if the Appeal be not made good, or not prosecuted with Effect, the Sessions shall award such Costs as they think reasonable to the Informer: But if made good, and he discharg'd of the Conviction, the like Cause shall be to the Appellant against the Informer.

And the Mayor and Aldermen of London, or Chief Magistrate or Justice within their several Jurisdictions may by Day enter into any House, Shop, Stall, Bake-house, Ware-house or Out-house of any Baker or Seller of Bread, and search for, view, weigh, and try all or any Bread of such Person there found. And if any Bread be wanting either in the Goodness of the Stuff, or in the due Baking, or Working, or Weight, or not truly marked according to the Directions, they may seize and distribute the same to the Poor of the Parish. And if any Baker or other Person shall not permit such Search or Seizure, or shall oppose or hinder the same, he shall for every Offence forfeit 40 s. to the Informer

former or Informers, to be levied, &c. *ut supra*. With a Clause for preserving the Rights and Customs of London, Court-Leets, and the two Universities.

And all Justices of the Peace, Constables and other Officers, are strictly commanded to see the Acts 29 Car. 2. cap. 8. & 22 & 23 Car. 2. cap. 12. put in due Execution. And all Justices of Assize, and Justices of the Peace to enforce and press the Execution of the said Laws, and to use all legal Methods to make the said Laws and this Act to be effectually observed.

The Penalty of 40 s. for Want of Weight, or not being marked as directed in the Act 8 Anna is repealed; and if any Baker shall make, or expose to Sale any Bread wanting an Ounce or more of due Weight, being thereof lawfully convicted, he shall forfeit 5 s. for every Ounce wanting, and wanting less than an Ounce, 2 s. 6 d. Complaint being made, and the Bread weighed before a Magistrate, within 34 Hours after 'tis baked or sold, if within the Bills of Mortality, and within three Days elsewhere; the said Forfeitures to be levied and disposed as in the Act 8 Anna.

A Warrant to levy the Penalty.

To the Constable, &c.

Surrey, ff. **W** Hereas Complaint hath been made unto us two of 1 G. c. 25.
Two Ju-
 his Majesty's Justices of the Peace for the said stices.
 County, that T. P. of, &c. did on the 24th Day of July last past, at
 L. in the County aforesaid, (there being no Mayor, Bailiff, Alderman
 or Chief Magistrate of the said Place) * expose to Sale Bread want-
 ing its due Weight. * Or as the
Offence is.

We therefore, pursuant to the Statute in that Case made and provided, did cause the said Bread to be weighed before us at L. aforesaid, and within three Days after it was baked, and it then wanted an Ounce or more of its due Weight, by Reason whereof the said T. P. hath forfeited † 5 s. These are there-
 fore to require you to levy the said Sum of 5 s. on the Goods and † If less
than an
Ounce, 'tis
2 s. 6 d.
 Chattels of the said T. P. by Distress and Sale thereof, rendring
 to him the Overplus, if any such shall happen to be, and that you
 then pay the same to S. E. of, &c. who first informed us of the said
 Offence. Given, &c.

The Miller's Toll-Dish ought to be according to the Stan-
 dard, and he ought to take one Quart for grinding a Bushel
 of hard Corn brought to his Mill; but if he fetch it, and car-
 ry it home, then two Quarts.

Witchcraft.

For Malt he is to take but Half the Toll he taketh for Corn; because 'tis easily grinded.

These Offences are punishable in the Lect; but for *changing the Grist*, a Miller may be indicted at the Sessions; for 'tis a Wrong done by Deceit, and is *contra pacem*.

Westminster-Hall. See Sessions.

Windows. See Houses.

Witchcraft.

IT seems plain, that there are Witches, because Laws have been made to punish such Offenders, tho' few have been convicted of Witchcraft.

The Statute now in Force, is that of 1 Jac. c. 12. By which 'tis enacted, That

Conjuration,
Consultation,
Covenant,

Entertainment,
Imployment,
Feeding or

Rewarding any evil Spirit, Taking up dead Bodies, or any Part thereof to be employed in Witchcraft or Charms, or using any Manner of Witchcraft, whereby any Person shall be killed, or any Part of his Body wasted or lamed; both the Principal and Accessaries are Felons without Benefit of Clergy.

Likewise by Witchcraft or Charms to find out any hidden Treasure, or to tell where lost Goods shall be found, or to provoke unlawful Love, or to destroy or hurt any Man's Body, or to attempt any of these Things; the first Offence is one Year's Imprisonment without Bail, and to stand in the Pillory six Hours every Quarter of that Year, and there to confess his Offence. The Second is, Felony without Benefit of Clergy; but the Person attainted, if a Woman, doth not lose her Dower, neither is there any Corruption of Blood.

Woman.

Woman. See in Felony.

TAKEN away by Force, is a Crime which is not mitigated, tho' the Marriage is by Consent afterwards. 3 H. 7. c. 2.

The Preamble of this Statute is, *viz.* *That Maids, Widows and Wives, having Substance in Goods, Lands and Tenements, and some being Heirs at Law, have been taken away for the Lucre of such Substance against their Wills, and married or defiled; and then 'tis enacted, That he who * taketh any Woman so against her Will, shall be a Felon.* * Also the

Procurer,
Abetter,

and wilful Receiver of such Woman; Clergy taken away *per Stat.* 39 Eliz. cap. 9.

A Man enticed the only Daughter of her Father, (who would be worth 5000 *l.*) to see a Ship, and when he had her on the *Thames*, carried her by Force and Threats into the Country, and there married her; but the Truth was, she had a Brother; and this was held not to be within that Statute, because the Preamble mentions the Estate and Condition of the Woman taken away, &c. and restrains the Purview to these particular Cases:

- (1) There must be a Taking by Force.
- (2) She must have Substance in Lands, Goods, &c.
- (3) Or she must be Heir Apparent.
- (4) She must be married or defiled.

Now in this Case, the Woman had not a present Subsistence in Goods, for her Father was living, and she was not Heir Apparent, for she had a Brother then alive. *Hob.* 182. *Hut.* 2.

But admitting a Woman had Substance, &c. or is Heir Apparent, another Question hath been made upon this Statute, Whether the Taking such Woman by Force, and Threatning her to make a Contract for a Marriage, is Felony or not? And held in the Negative: For though in the Body of the Act, 'tis said, That the Taking by Force is Felony, yet the Intention, 1 And. 115. of the Law is afterwards expounded, *viz.* It must not only be Savil 59. a Taking by Force, but Marrying or Defiling. 'Tis true, Justice Croke was of a contrary Opinion, but the other is Law at this Day.

Three were indicted on this Statute, for that *Sarah Cox* Cro. Car. having a Portion of 1300 *l.* they to gain the said Portion took 347. her against her Will at *Newington* in *Middlesex*, and carried her *Fulwood's* to *St. Saviour's* in *Surrey*, and there one of them by the Procurement. Case.

ment of the other two Defendants married her, &c. It was insisted that she gave her Consent to be married; but adjudged that the Taking her away, being unlawful, and against her Will, tho' the Marriage was with her Consent; 'tis Felony; and tho' it was not a Marriage *de Jure*, because she was under a continual Fear, yet it was a Marriage *de facto*, and Felony within the Statute, without Clergy.

One B. personated a *Country Lady*, tho' in Truth she was a *lewd Woman*, and took a Lodging where one *Rawlins*, an *Heiress*, lodged, and soon afterwards introduced one *Swanson*, whom she pretended to be her Brother, into the Company of this *Heiress*, and by her frequent Commendations of him, inclined the *Heiress* to declare she wished he would marry her; but B. could not effect her Design, without getting the *Heiress* from the *Aunt*; thereupon she persuaded them both to go to Church with her, and having procured two Bailiffs, they arrested both the *Aunt* and the *Heiress* in going to Church, and carried them to a Tavern, and put them into separate Rooms, and presently removed the *Heiress* to another Tavern, where *Swanson* came to bail her, and B. told her, That if she did not marry him, she must go to *Newgate*; whereupon she married him under the Arrest. Now, tho' the *Heiress* had a Fancy to the Man, yet she knowing of this Contrivance, and not consenting to come to him after this Manner, and being married under this Restraint; tho' she consented to the Marriage, yet it was Felony in *Swanson* by this Statute, for here was a forcible Taking away, and her subsequent Consent whilst under a Restraint, shall be accounted as the Effect of the continuing Force; and if *Swanson* had not known of the forcible Taking away, yet he knowing her to be under Restraint, and marrying her whilst she was so, made him an Approver of the first Force, and Partaker of it; he was hanged.

All Aiders and Assisters to this Fact are Principals. *Mich. 1 Anna.*

Indictment on this Statute for the Forcible Taking away and marrying *Lucy Ramsey* of the Age of 14 Years, and having 5000 *l.* Portion; the Fact was thus: She was persuaded by *M. P.* to take the Air in *Hide-Park* in a Coach, and being there, the Coachman drove from the Company, and one *Brown* came up to the Coach in a Mask, and persuaded *M. P.* to come out of the Coach, which she did then he pulled Mrs. *Ramsey's* Servant out, and went into the Coach himself, and kept her in 'till he came to his Lodgings in the *Strand*, where after threatening to carry her beyond Sea, he prevailed to marry her, but was taken the same Day, and she was admitted to be a *Witness* against him, being only a Wife *de facto*; but in the Lord *Castletown's* Case the Wife *de jure* was Witness; she prov'd the Forcible Taking away, and there was Proof of her

her Substance and of her Marriage, tho' not deflowr'd: He was hanged. 1 Vent. 243. Brown's Case.

There is another Statute, and 'tis the last of *Phil. & Mar.* 4 & 5 Ph. which relates to the Taking away any Woman-Child, under & M. c. 8. the Age of sixteen Years, out of the Custody, and against the Will of the Father or Mother, or of the Person to whom the Father devised the Child; the Punishment in such Case is two Years Imprisonment, without Bail, or to pay such a Fine as shall be imposed on him by B. R.

If he defile or marry such Child, he shall be imprisoned five Years, or pay a * Fine, &c.

If such Child is above twelve, and under sixteen Years, and consenting to marry, then the next of Kin, to whom her Inheritance should come, shall enjoy it during her Life; but after her Decease, it shall go to the Heir at Law, but never to the Husband. *Mod. 84. 163.*

A Freeman of London devised the Custody of his Daughter to C. and died, the Daughter being then in the Country: C. gets a Warrant from the Chief Justice to take her, which he did, but she was then married to B. This was held to be out of the Statute, because the Child was never in Possession of the Guardian. *Sid. 363.*

This Statute seems to be an Affirmance of the Common Law; for if, (before the Statute) a Man came to the Father's House, and contracted with his Daughter, under 15 Years of Age, and by Appointment meeting and marrying him, this is punishable by Fine and Imprisonment. *Sid. 387.*

An Information was exhibited against the Defendant for an unlawful Practice and Combination, in procuring a clandestine Marriage in the Night between a Maid-Servant and a young Gentleman, who was Heir to an Estate, and this was without Banns or Licence; and the Person being drunk, they were fined 1000 Marks, and committed till paid. *March 52. Cro. Car. 557.*

By the Statute 4 & 5 *Phil. & Mar.* before-mentioned, 'tis 4 & 5 Ph. enacted, That if a Woman under the Age of sixteen, and unmarried, is taken away from her Parents or Guardian against his Consent, &c. That the Party shall suffer two Years Imprisonment, and pay such a Fine as the Court of Star-Chamber shall set on him, and that the Justices of Assize may hear and determine the Offence by Indictment, &c. *Cro. Car. 353. Mary Smith's Case.* the Defendant was indicted before the Judges of B. R. in *Middlesex* for this Offence: It was objected that it was *coram non iudice*, because the * Statute directs that it shall be determined by a Judge of Assize, and the Court of Star-Chamber shall set the Fine; now there are no Judges of Assize in *Middlesex*, and the Court of Star-Chamber is taken away: The Court doubted on both Points. ** But there being no Negative Words in the Statute, B. R. is not excluded. 2 Lev. 179 3 Rep. in Ratcliff's Case.*

The Testator having a Son and Daughter appointed by his Will that their Mother should educate them; she married again and the Daughter being in the Father in Law's House, and

being above the Age of 14, and under 16, went from thence by his Consent to London, and was there married to W. R. Adjudged that the Mother had the Custody of the Daughter at the Time of the Contract and Marriage within this Statute, both as Guardian by Nature, and by the Will of her Father: And though she was gone six Hours before she married, yet in Judgment of Law the Mother had the Custody of her at the Time of the Contract, because it was a Thing inseparable from her Person.

An Indictment on the Statute.

On the
Stat. 3.H.7.

Middl' ff. **J**UR', &c. quod P. R. generosa 6 die Novemb. 1702. existens Virgo & innupta & Reptis & Heres G. R. sen' adtunc defunct' & Filia & Heres

W. R. ante tunc etiam defunct' fuit etatis serdecim Annozum & amplius & infra etatem octodecim Annozum & adtunc habuit opes & hereditatem in mobilibus & in terris & tenementis, (viz.) in pecuniis Bonis & Catallis ad valentiam trium mille librarum & in terris & tenementis ad valentiam 20 l. per Annum sibi & heredibus de corpore suo & quod H. S. nuper de Paroch' Sancti Egidii in campis in Com' Middlesex, Yeoman, predict' 6 die Nov. vi & armis p'fat' P. R. existen' innupt' & heres ut p'fertur & habens opes & hereditat' apud Paroch' Sancti Egidii in Camp' in Com' p'ed' p'zo lucro hujusmodi opum & hereditat' p'ed' P. R. illicite felonice violent' & contra voluntat' p'edict' P. R. capiebat abducebat & asportabat p'fat' P. R. ea intentione causare & procurare p'ed' P. R. contra voluntat' suam in Matrimonio p'fat' H. S. jungi & ei nubere & in Nuptiis contrahi & quod p'edict' H. S. existen' Homo inhoneste conversationis & nullius vel paululum fortune vel census adtunc & ibidem per auxilium & procuracion' S. B. de Paroch', &c. felonice nupsit p'fat' P. R. & in Matrimonio fuit illi conjunct' & adtunc & ibidem illam carnaliter cognovit ad magnam displicentiam Dei contra leges Regis ad infamiam & dedecus p'ed' P. R. & ad magnum dolorem & tristitiam omnium suorum amicorum ad malum exemplum omnium aliorum contra formam Statut' & contra pacem dicti Domini Regis Coron' & Dignitat' suas; & qd' A. B. postquam p'fat' P. R. tam illicite violent' & felonice capt' abduct' & asportat' fuit & p'fat' H. S. nupt' & in Trozem duct' ut p'fertur sciens p'edict' P. R. sic capt' & abduct' fuisse contra voluntatem suam & p'fat' H. S. nuptam esse postea, viz. p'ed' 6 die Novembris, Anno Regni Domini Regis nunc primo apud Paroch' p'edict' eandem P. R. ac etiam p'edict' H. S. voluntarie scienter & felonice recipiebat, abettabat, confortabat, occultabat

bat & auxiliabatur & prædict' H. S. cum præfat' P. R. jacere & illam carnaliter cognoscere adtunc & ibidem felonice incitabat, abettabat, adsubabat, causabat & procurabat contra formam Statut' & contra pacem Dom' Reg' nunc Cozon' & Dignitatem suam.

Woods. See Fuel.

Several Laws have been made for the Preservation of Wood 35 H. 8. and Timber; the most material are, Where Coppices are ^{cap. 7.} felled at or under 24 Years Growth, there shall be left in every Acre 12 Standils of Oak; and if so many do not grow there, then it shall be supplied with the like Number of Elm, Ash, Asp or Beech; or for every Standil not so left, the Owner forfeits 3 s. 6 d.

These Standils must not be felled till they are ten Inches square within three Foot of the Ground, under the Forfeiture of 3 s. 6 d.

If felled above 24 Years Growth, and not leaving so many Standils, &c. forfeits per Standil 6 s. 8 d.

Must not fell such Standils which are left till twenty Years afterwards; Forfeiture for every Tree so felled within that Time, 6 s. 8 d.

But such Standils may be felled for the Use of the Owner of the Soil in Building, &c.

Under-Woods felled at fourteen Years Growth, or under, shall Under- for six Years afterwards be * preserved from Destruction of Woods, Cattle, or the Owner shall forfeit for every Rood per Month 13 Eliz. cap. 25. unfenced, 3 s. 4 d.

* This must be done by him who hath a lawful Interest and Possession in the Woods, and it must be set forth in the Information, or it is ill. Cro. Eliz. 127.

If above 14 Years, and under 24 Years Growth, then must be preserved for 8 Years.

If above twenty-four Years, then must be preserved for nine Years.

No Cattle shall be put in from the Time of Felling such Coppices till 5 Years afterwards; nor then neither but Calves or yearly Colts until the End of 6 Years, if the Coppice was under 4 Years Growth.

Coppice Wood containing 2 Acres and upwards, and being two Furlongs distant from the House of the Owner, shall not be converted into Tillage or Pasture; Penalty is per Acre 2 l.

These Forfeitures are to be recovered in any Court of Record, and go to the King and Prosecutor.

Woods

Woods or Under-woods shall not be converted into Coal for making Iron, which grow,

1. Within 22 Miles of *London* or Suburbs.
2. Or within that Distance of the *Thames* from *Dorchester* in *Oxfordshire* downwards.
3. Or within 4 Miles of the Foot of the *Downs* between *Arundel* and *Pevensey* in *Com. Sussex*.
4. Or within 4 Miles of *Winchelsea* or *Rye*, two Miles of *Pevensey*, three Miles of *Hastings*.

The Penalty is 40 s. per Load, between King and Prosecutor.
Per Stat. 23 Eliz. cap. 5.

This Act doth not extend to Woods growing in the Wilds of *Surrey*, *Sussex* or *Kent*, within 22 Miles Distance from *London*, nor to such which are distant above 18 Miles from thence, or the *Thames*.

No new Iron-works are to be built within twenty-two Miles of *London*, fourteen Miles of the *Thames*, or four Miles of the *Downs*, of *Pevensey*, *Winchelsea*, *Hastings*, or *Rye*: Penalty one hundred Pounds between the King and Prosecutor, per Statute 23 Eliz. cap. 5.

Furnaces, &c. shall not be erected in *Sussex*, *Surrey*, or *Kent*, otherwise than upon old Bays, or Fens where such Works have been lately standing.

Or upon Lands where such Works may be continually supplied with Woods of the Owner of such Furnance without committing Waste; the Penalty is 300 l. between the King and Prosecutor.

If Oak, Ash or Elm, being Timber, and a Foot Square in any Part, shall be converted into Coal or Fuel for Iron-works; the Penalty is 40 s. per Tree between the King and Prosecutor.

Lops of such Trees may be coaled in those Counties, but not within eighteen Miles of *London*, eight Miles of the *Thames*, four Miles of *Rye* and *Winchelsea*, three Miles of *Hastings*, or four Miles of the Foot of the *Downs*, between *Arundel* and *Pevensey*.

See for more relating to this in Title *Hedge-breaking*, where you will find the Statute 15 Car. 2. mentioned; and these Precedents which follow, relate to that Act.

A Warrant against one for stealing Wood.

To the Constable and Headborough, &c.

Suffex, ff. **W** Hereas it hath been duly proved before me, That One Justice. T. P. of, &c. hath lately cut and taken Wood of One Wit- R. N. contrary to the Statute in that Case made and provided, which was on Wood was of the Value of 8s. These are therefore to require you to Oath. cause the said T. P. to be publickly whipped in the Town of L. in Case Within six he shall not forthwith pay unto the said R. N. the said Sum of 8s. Weeks af- which I do hereby order him to pay accordingly, in Satisfaction for the fence, ter the Of- said Wood. Given, &c.

A Warrant to search for stolen Wood.

To the Constable and Headboroughs of the Hundred of, &c.

Suffex, ff. **W** Hereas I have been credibly informed by J. O. of, &c. that a Parcel of Wood was * lately cut, ta- * Within ken, and carried away off and from his Lands in H. in the said Coun- fix Weeks ty, contrary to the Statute in that Case made and provided: These are therefore to require you to enter into, and search the Houses, Out- houses, or any other Places of such Persons when you shall just- ly suspect to have taken the same, and if you find any such Wood, that then you apprehend the Person or Persons suspected for cutting and taking it, and those in whose Houses, Out-houses, or other Places it shall be found, and bring them before me, or some other of his Majesty's Justices of the Peace for the County aforesaid, that such Proceedings may be had against them for the said Offence as is directed by Law. And hereof fail not, &c.

An Order for Payment of Money in Satisfaction of stolen Wood, or to be sent to the House of Cor- rection.

To the Constable, &c. and to the Keeper of the House of Correction.

R W. being suspected for unlawfully cutting and taking Wood on the 21st Day of this Instant April, was brought before me, and not giving satisfactory Account how he came by the same, nor being able to produce the Person of whom he bought it, or any credible Wit- ness to testify upon Oath the Sale thereof, he thereupon stands con- victed of Cutting and Spoiling the same: And it being proved before

* 43 Eliz.
cap. 7.
15 Car. 2.
cap. 2.

†Any Time
not exceed-
ing a
Month.

me that B. R. of, &c. was the Owner thereof, I did therefore order and appoint the said R. W. within six Days next ensuing to pay unto the said R. B. the * Sum of, &c. in Recompence and Satisfaction for his Damages, and that the said R. W. should likewise forthwith pay to the Overseers of the Poor of the Parish of H. where the said Offence was committed, the Sum of 9s. And whereas the said R. W. hath not paid the said respective Sums according to the said Order or Appointment: These are therefore to require you to convey the said R. W. to the House of Correction, and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to receive him into your Custody, and to detain him in your House by the Space of † ten Days next after he shall be delivered unto you: And hereof fail not, &c. Given under my Hand and Seal, &c.

If the Justice do not think fit to send him to the House of Correction, he may order him to be whipt.

Mittimus for the second Offence.

To the Constable and Headborough of, &c

Second Of-
fence.

Suffex, ff. **A**S in the former Warrant, to the Words [*And it being proved.*] And whereas the said R. W. was once convicted of the said Offence: These are therefore to require you to convey him to the House of Correction, and to deliver him to the Keeper thereof, commanding you the said Keeper to receive him into your said House, and to keep him there to hard Labour by the Space of one Month: And hereof fail not, &c.

An Order for the Buyer of stolen Wood to pay treble Damages.

Suffex, ff. **W**Hereas it hath been duly proved before me, That R. N. of, &c. did within five Days last past buy several Burdens of Wood of W. O. being a Person justly suspected to have stolen the same, contrary to the Statute in that Case made and provided, and that it was the Wood of R. B. of, &c. and was of the Value of 10s. at the Time the said R. B. bought the same: I do therefore order that the said R. N. do forthwith pay unto the said R. B. the Sum of 30s. being the treble Value of the said Wood. Given under my Hand and Seal, &c.

A War-

A Warrant to distrain for Non-payment of the Money according to the Order above-written.

Suffex, ff. **R** Ecite the former Order *Verbatim*. Then say :
And whereas the said R. N. hath not paid to the said R. B. the aforesaid Sum of 30s. These are therefore to charge you to levy the same upon the Goods and Chattels of the said R. N. by Distress and Sale thereof, and forthwith to pay the same unto the said R. B. to whom it is justly due. Given under my Hand and Seal, &c.

If there cannot be any Distress taken, the Offender may be committed to Gaol for a Month without Bail.

There is a Clause in the aforesaid Statute of 35 H. 8. which relates to Justices of Peace, viz. Where there is a Wood or Coppice wherein others have *Common of Pasture*, the Lord or Owner shall not cut down the same (except for his own Use) before he and the Commoners shall agree to set out a fourth Part thereof to be enclosed for his Use; and if they cannot agree in it, then two Justices appointed by the Sessions shall summon twelve Commoners and Inhabitants there; and those Justices, with the Consent of the Lord and those Commoners, shall set forth a 4th Part thereof, to be inclosed by the Lord within four Months afterward, and then to be felled by him; and if any Cattle shall come into that Inclosure within seven Years after the Wood is felled, the Owner of the Cattle shall forfeit for every Beast 4s. and during that seven Years, the Commoners shall have no Right of Common there, and the Lord shall be barred to common in the Residue; but after the seven Years they may both intercommon in the Whole; and in Case the Lord doth not fell the fourth Part within a Month after it is inclosed, the Commoners may put in their Cattle as before.

This Act doth not extend to Under-woods in *Kent, Surrey* and *Suffex*, save only to the common Woods there.

An Information for cutting Wood, and not leaving Standils, &c.

M Emorand' quod R. K. de H. in Com', &c. qui tam pro Domino Rege quam pro seipso sequitur in hac parte venit hic in Curia dict' Domi' Reg' coram ipso Rege apud Westmon' in propria persona sua die Jovis prox' post quinden' Pasche, videlicet, isto eodem termino & tam pro eodem Domino Rege quam pro seipso dat' Curie hic intelligi & informari quod quidam R. B. de H. in Com'

Com' pzed' Ben' pꝑmo die Aprilis ultimo pꝑterito fuit & adhuc est possessionat' pꝑo termino septem Annoꝝum adtunc & adhuc ventur' de solo cufusdam filbe fibe bosci vocat' Highwoods continen' 50 Acras facen' & existen' in Paroch' de H. in Com' pzed' at pꝑprietarius

ibidem crescen' eodem pꝑmo die Aprilis supꝑdicto & quod pzed' R. B. eodem die & dīberfīs aliis diebus & vicibus inter dictum diem & ante diem exhibitionis huius informationis causabit & mandabit decem Acras bosci parcell' pꝑdict' 50 Acrar' pꝑosternari & succidi apud H. pꝑdict' in Com' pzed' & quod bosci pzed' sic pꝑosternat' & succisus fuit

quodque pzed' R. B. tempore succissionis bosci non relinquit duos decim

querci crescen' super quamlibet acram sic succis. iuxta formam statuti in huiusmodi casu edit' & pꝑobis. unde pꝑdict' R. K. tam pꝑo Domino Rege quam pꝑo seipso petit advisamentum Curie in pꝑemissis ac quod pzed' R. B. forisfaciat videlicet pꝑo quolibet

sic non relict' stante fibe crescente super quamlibet acram pzed' decem acrarum bosci 3 s. 6 d. iuxta formam stat' pzed' & quod ipse R. K. medietatem inde habere valeat iuxta statut' pzed', &c.

For felling Oaks out of the Time of Barking, viz. between April 1. and last of June.

5 El. c. 8.
repealed.
1 Jac. 1.
c. 22. continued per
3 Car. c. 4.
to the End
of next
Sessions of
Parliament
expired.

Memoꝝand', &c. quod R. K. &c. venit, &c. quod quidam R. D. pꝑmo die Julii ultimo pꝑterito apud H. in Com' pzed' in & super boscum vocat' Highwoods, ubi quelibet caruocat' corticis quercuum per totum tempus pꝑdict' valebat duos solidos ultra & supra onera excoꝝicationis inde succidit & succidi causabit centum quercus (Anglice, Oak-Trees) idoneas excoꝝicari (Anglice, fit to be barked) in bosco pꝑdict' crescen' contra formam statuti in huiusmodi casu edit' & pꝑobis. que quidem centum arboꝝes querc' non fuer' impendit' nec earum aliqua impendit' fuit in vel circa edificationem sive reparationem aliquarum domoꝝum nabium vel molendinoꝝum & quod quelibet quercus inde fuit adtunc pꝑetii 10 Solidoꝝum, unde pꝑdict' R. K. petit advisamentum Curie in pꝑemissis ac quod pzed' R. D. forisfaciat duplicem valorem pzed' Centum querc' pꝑ ipsum in forma pzed' succis. quodque pzed' forisfactura divi- datur in tres partes & ipse R. K. unam partem inde habere valeat iuxta formam statuti pzed'.

The King is to have the other third Part, and the City, Corporation, or Lord of the Liberty, the other Part. Expired.

Wool and Woollen Cloth.

THIS being a Staple Commodity of the Kingdom, on Vide ante which the Value of our Lands, and the Trade of the tit. Cloth. Nation doth depend; it hath been the Care of our Laws to prevent its being transported, under very severe Penalties.

It was above 350 Years since Exporting Wool was first made ^{23 Ed. 3.} Felony, and not only so, but the Offender was to forfeit all his ^{cap. 7.} Lands and Goods.

'Tis true, this Punishment continued but 11 Years; for *An-* ^{38 Ed. 3.} *no* 38 Ed. 3. that Part of the Statute which made the Offence ^{cap. 6.} Felony was repealed, but the Forfeiture of Lands and Goods still continued.

That and some other Laws relating to this Matter are now ^{12 Car. 2.} obsolete, and therefore *Anno* 12 Car. 2. a new Statute was made, ^{cap. 2.} by which those who exported or loaded on any Carriage to be transported the Goods following, forfeit the same:

Fullers Earth or Clay.

Morlings.

Sheep.

Shorlings.

Wool, *English* or *Irish*.

Woolfels.

Yarn made of Wool.

And over and above these Forfeitures, for every Sheep exported 1*l*. And for every Pound-Weight of the other Goods, 30*s*.

Likewise the Owner of the Ship knowing the Offence, forfeits all his Interest therein; and the Masters and Mariners assisting, forfeited all their Goods, and were to be committed for three Months without Bail.

Those who transported, or caused to be transported, any of those Goods, and being convicted of that Offence, were disabled to sue for any Debt.

These Forfeitures were to be recovered at the Sessions in that ^{† By 9 &} County where the Offence was committed, or where the Of- ^{10 Will.} fender shall be taken; but it must be within [†] a Year after the ^{The Time} Offence committed, and one Moiety is to go to the King, and ^{is enlarged} the other to the Prosecutor. ^{to 3 Years.}

And if any Person find such Goods on Board, or packed or loaded on any Carriage, or laid near any Water to be exported into *Scotland*, or any foreign Parts, he may seize the same, and shall have the full Moiety to himself; but then he shall not be an Evidence upon Oath to convict the Offender, &c. But

14 Car. 2.
cap. 18.

But notwithstanding this Law, great Numbers of Sheep and Wool were transported, and therefore two Years afterwards another Act passed to make it Felony to export any of the Goods above-mentioned; and all Persons assisting or consenting thereunto were made Felons.

By this Statute it was likewise enacted, That Wool should not be conveyed from Place to Place, but in the Day-time, under the Penalty of forfeiting the same, one Moiety to the King the other to the Prosecutor.

And to encourage the Discoverers of such Offences, it was provided, That the Owners of any Vessel, or any Master or Mariner, knowing such Goods were exported, and who at his Return, or within three Months after his Knowledge of the Offence, shall make Information thereof on Oath before a Baron of the Exchequer, he shall not be punished as a Felon.

Offences against that Act may be tried at Sessions.

Cap. 28.

But because the Punishing a Man as a Felon was thought too severe, therefore Offenders were not prosecuted for this Offence as they ought, and the Law was by this Means without any Effect; so that by 7 & 8 Will. so much of the former Act which made Exporting Wool, &c. Felony, was repealed.

1 Will. c. 32.

And lest under a Pretence of carrying Wool to any Place or Port on the Sea-Coasts in England, some designing Persons might the more easily transport it; therefore by the Statute 1 Will. Owners of Wool, or their Agents, must make an Entry of the Weight, Marks, and Numbers thereof, at that Port, from whence it shall be intended to be conveyed; and this Entry must be made before they carry it within five Miles of any such Port or Place, or otherwise the Goods carried are forfeited, and so are the Beasts and Carriages, and the Persons conveying, driving, or abetting, shall forfeit and suffer as by the former Acts against exporting Wool.

But People may carry their Wool from the Sheering-place to their own Houses, though within five Miles of the Sea; so as within ten Days after the Sheering, and before they dispose the same, they certify under their Hands to the Custom-Officer of the next Port, the Number of the Fleeces, and where housed, and do not remove the same without certifying the Officer again of their Intention to remove it, at least three Days before the Removal. The Penalty is the Forfeiture of the Wool.

5 G. c. 11.

The Provisions which are made against exporting Wool by the Statute 1 W. shall extend to Woolfells, Mortlings, Shortlings, Woollen Yarn, Woolflocks, Fullers Earth, Fulling Clay, and Tobacco-Pipe Clay, carried Coastwise.

7 & 8 Will.

The Inhabitants of the Northern Countries adjoining to Scotland, did frequently carry Wool and other Goods above-mentioned into Scotland, and the Scots exported them into

France;

France; therefore *Anno 7 Will.* a Law was made, prohibiting Wool, &c. to be carried on Land in the said Counties, or within five Miles of the Sea, but between Sun-rising and Setting, upon Pain of Forfeiture of Goods, Horses and Carriages.

If transported in a Ship, that is forfeited, together with the Goods, and treble the Value thereof, and treble Costs, and the Inhabitants of the Hundred next adjoining to *Scotland*, or to the Sea-Coasts, out of or through which any Wool shall be carried or exported, forfeit 20 l. if the Wool is under the Value of 10 l. and if above that Value, then treble what the Wool is worth, and treble Costs of Suit, to be recovered by Action of Debt, &c. And Execution shall be had against two or more of the Inhabitants of the Hundred, and the Justices in Sessions may reimburse them, by rating the Towns, Parishes and Hamlets in that Hundred, as by the Statute of *Hue and Cry*, and cause the Penalties to be levied by an equal Assessment on the Inhabitants.

Those who are convicted of Aiding, Abetting or Assisting to the Carrying or Exporting Wool as aforesaid, shall be committed three Years without Bail, and both they and the Owner of the Wool shall satisfy treble the Value of such Forfeitures and Penalties with which the Inhabitants of those Hundreds shall be charged, and treble Costs of Suit; and this shall be for the Use of the said Inhabitants, to be recovered by Action of Debt, &c. in the Name of the Clerk of the Peace, without naming his Christian or Surname.

But the Jury must not be of that County where the Fact was committed.

And to encourage the Persons to discover these Offenders, the first three Persons who have been aiding or assisting in carrying out or exporting Wool, or any of the aforesaid Commodities; and who shall inform any Justice of Peace of those *Northern Counties*, whereby the aforesaid Punishment and Penalties may be inflicted and recovered; such Discoverer, not being the Owner of the Wool, &c. shall be acquitted.

But no Man entitled to the Penalties and Forfeitures shall compound with any Hundred liable to pay the same, for a lesser Sum than what is given by the Act; if he doth, it shall be lawful for any other Person to sue for and recover the same, and the Person compounding must be imprisoned for five Years without Bail.

The first Act, *Anno 1 Will.* was temporary, but it was continued by 4 & 5 *Will.* and farther continued by 7 *Will.* which was also continued by 9 & 10 *W.* that being explanatory of the former Laws; by which Act it is enacted, That Wool lodged within ten Miles of the Sea, either in *Kent* or *Sussex*, the Owner thereof must within three Days after Sheering give an Account in Writing to the next Custom or Port-Officer; and if

Wool and Woollen Cloth.

lodged within 15 Miles of the Borders of Scotland, then he must give an Account,

1. The Number of Fleeces.
2. Where lodged, or housed.

And before he removes it, he must give the like Notice in Writing, &c.

1. The Number of Fleeces.
2. Where lodged.
3. To whom disposed.
4. Where intended to be carried.

The Wool is otherwise forfeited, and 3 s. for every Pound-weight besides, and so is all the Wool found within 15 Miles of the Borders of Scotland, and not entered.

The Officer is to enter this gratis, and must give a Certificate, specifying the Owner and Buyer, and the Place and Time of the Removal, viz. That 'tis to be removed from such a Place, and within a Time by him limited.

But if carried away, after Sheering, it shall not be lodged again within 15 Miles of the Sea, under the like Penalty, viz. forfeited if found, and likewise 3 s. for every Pound-weight.

Persons residing within 15 Miles of the Sea, either in Kent or Suffex, shall not buy Wool before they enter into Bond to the King, with Sureties not to sell the said Wool unto any Person within 15 Miles of the Sea; and if such Wool is carried towards the Sea-side and not entred, and no Security given, 'tis forfeited, and likewise 3 s. for every Pound-weight.

Concealing Wool within 15 Miles of the Sea, and not entering it, such Wool shall be seized and forfeited, and the Persons claiming it must give Security to the Exchequer (if cast upon a Trial) to pay treble Costs over and above the Penalties and Forfeitures.

The Forfeitures are to be divided, viz. One Third to the King, the other two Thirds to him who seizes or sues for the same.

The King may order Prosecution at any Time within three Years.

The general Issue may be pleaded, and the special Matter given in Evidence; and if the Plaintiff is cast or discontinued, he pays treble Costs.

10 & 11 Will. cap. 10. The Woollen Manufactures encreasing in Ireland, and in the English Plantations in America, and being exported from thence to Foreign Markets, which were formerly supplied from England; therefore a Law was made, Anno 10 & 11 Will. to prohibit the Exportation of these Goods following from Ireland:

Bays,

Wool and Woollen Cloth.

739

Bays,
Cloths,
Cloth-Serges,
Druggets,
Drapery-Stuffs,
Frizes,
Kerseyes,
Mortlings,
Says,
Shalloons,

Serges,
Shortlings,
Wool,
Woolfels,
Woolflocks,
Woollen Manufactures,
Worsted Bays,
Woollen Yarn, or made, or
mingled therewith.

The Penalty for the Exporter, and for those who load or
cause to be loaden on an Horse, Cart or Carriage, or on Board
any Vessel in any Part of Ireland, to the Intent to export the
same (except into England) is Forfeiture of the Goods, and
500 l. for every Offence.

But such Goods may be transported

From	{ Cork, Drogheda, Dublin,	{ Kingsale, Waterford, Youghall,	} in Ireland.
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To	{ Barnstaple, Biddisford, Bridgewater, Bristol,	{ Chester, Leverpool, Milford-Haven, Minehead,	} in England.
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So as Notice be first given to the Commissioners of the Cu-
stoms here, or to the Customer or Collector in the Port, to
which the same is intended to be brought.

Of the	Quality.
	Quantity.
	Package.
	Marks.
	Number thereof.
	Name of the Ship.
	Name of the Master.
	Place or Port.
	Where intended to be brought.

And Bond entered in to the King, with one or more Sure-
ties, to treble the Value of the Goods, that the same (Danger
of Seas excepted) shall be landed accordingly.

And there must be a Licence under the Hands of three of
the Commissioners, or under the Hand of the Chief Customer

B b b 2

or

Wool and Woollen Cloth.

or Collector of the Port where the Bond is given, for the landing and importing such Wool, &c.

And to prevent the Exportation of Wool out of *England* or *Ireland*; the Lord Admiral is to appoint two Fifth and two Sixth Rates, and eight armed Sloops, constantly to cruise on the Coasts of *England* and *Ireland*; and to encourage the Commanders and Seamen, they are to seize such Ships and Wool, and they are declared to be forfeited; and they are to lodge the Wool in the King's Warehouse, in such Port where it shall be seized or brought, until it shall be condemned, and then the Wool, Ship and Tackle shall be exposed to Sale by Inch of Candle, there being first Notice given thereof in Writing 21 Days, both at the Custom-House of the said Port, and on the *Royal Exchange* in *London*; and one fourth Part of the Money shall be to the Commander, another fourth Part to the Officers of the Ship that took the Prize, another fourth Part to the Seamen, and the rest to the King.

And every Commander neglecting his Duty, or compounding for any Wool or Ship taken, or conniving at Exportation of Wool, forfeits all his Pay, must be committed for six Months, and made incapable for ever of serving the King at Sea.

Then there is a Clause, prohibiting Exportation of Wool, Yarn, &c. being of the Product or Manufacture of the *English* Plantations in *America*, under severe Penalties. See the Act at large.

11 & 12

Will. c. 31.

But some Disputes having arisen concerning the Act before-mentioned; therefore by another Act made in the very next Year, 'tis declared, That that Act shall not subject any Person or Vessel to the aforesaid Penalties, for or concerning such Woolfells as shall be necessary for the Gunner or Boatswains Stores, or for such other Woollen Manufactures as shall be for the proper Use for Cloaths of Seamen or Passengers for their own Wearing, and shall not exceed above 40 s. for one Mariner.

And by the Statute 5 G. cap. 11. 'tis enacted, That after the 24th of June 1719. all such Wools and other the Commodities mentioned in the Act 10 Will. cap. 10. which shall be brought, carried, or laid on Shore at or near the Sea, or any navigable River, to be exported out of *Ireland*, shall be forfeited, and the Offender shall be liable to the like Penalties as Persons by that Act are to incur for exporting or shipping of Wool contrary to that Act, and to be recovered and distributed as other the Pains in the said Act.

Working
in Wool.
1 Annæ.

But as it is necessary to prohibit the Exportation of Wool, so 'tis requisite to prevent any Fraud which may be committed by Persons working in the Woollen Manufacture; and therefore by a late Act 'tis provided, That any Person employ'd in working Wool, Linen, Fustian, Cotton or Iron Manufactures, and who shall imbezil or purloin,

Cotton,

Cotton,	Iron,
Ends of Yarn,	Materials of Wool,
Flax,	Thrums,
Hemp,	West's,

with which he shall be intrusted to work on, or shall reel short or false Yarn, shall forfeit double the Value of the Damages done, to the Use of the Poor of the Parish where done: Conviction is to be before one Justice by the Oath of one Witness, or by the Confession of the Party accused.

If the Offender refuse to pay the Forfeiture, the Justice may commit him to the House of Correction until he pay it; and if it shall appear to the Justice that he is not able to make Satisfaction, then he shall be there whipped, and kept to hard Labour, not exceeding 14 Days.

Buying or receiving any of these Goods before-mentioned, incurs the like Penalty, and must be convicted as before.

By the Statute 1 Georgii all mixt and medley Cloth shall be put into Water, and measured by two indifferent Persons, to be chosen by the Buyer and Seller; and if they do not agree, then a third Person shall be chose; and if he refuse, then, in London, the Keeper of Blackwell-hall, and if elsewhere, then a fit Person to be appointed by the chief Magistrate, shall determine the Measure, and shall be paid 6 d. by the Buyer; and if 'tis less in Length or Breadth than is mentioned in the Seal, the Maker or Seller shall forfeit the sixth Part of the Value to be paid by the Buyer, and to be deducted out of the Price.

Millman refusing to take an Oath truly to measure, or neglecting to fix a Seal at every Broad-Cloth-Head, before carried from the Mill; or any Person counterfeiting the Seal afterwards, and before the Cloth is sold, forfeits 20 l. in Lieu of 20 s. by a former Act, which see in Title Cloth.

These Offences to be determined as in that Act.

Forfeitures, if in London, to be paid to Christ's Hospital; if elsewhere, then to the Poor of the Parish where the Offence shall be discovered; the Offender refusing to pay after Demand, and within thirty Days after Conviction, the Justice before whom he was convicted, or where the Millman liveth, may levy it by Distress, &c. and where that cannot be had, commit to the Gaol for three Months. Prosecution must be within forty Days after the Offence discovered.

By the Statute 4 G. cap. 11. 'tis enacted, That if any Person shall be in Gaol after the 20th of January 1717. for unlawful Exportation of Wool, and who shall refuse to appear and plead to a Declaration or Information, to be delivered to the Gaoler,

Wool and Woollen Cloth.

for the Space of one Term, Judgment shall be had against him by Default; and if that or a Verdict be against him, and he do not pay the Money within three Months after entering up the Judgment, the Court shall cause him to be transported for seven Years, and if he returns before the Time is expired, he shall suffer as a Felon without Benefit of Clergy.

The Act for Every Corpse must be buried in Woollen, on Pain of five Pounds to the Poor of the Parish where buried, and to the Woollen. Prosecutor.

30 Car. 2.
cap. 3.

† It must
be taken
before a Ju-

stice of Peace, Master in Chancery, Mayor, Bailiff, or chief Officer, &c. And per 32 Car. 2, before the Parson, Vicar and Curate, except where the dead Person is buried.

If such Affidavit is not brought, then five Pounds may be levied by Warrant from one Justice.

1. On the Goods of the Party deceased; and if he hath none.
2. On the Goods of the Person in whose House he died.
3. Or on the Goods of any who had a Hand in putting him into the Coffin, or that ordered the same.
4. And if a Servant, and dying in his Master's Family, then on the Master's Goods; and if a Child, then on the Parents Goods.

But in this Case, the Minister must give Notice, and certify under his Hand to the Churchwardens or Overseers of the Poor, That no such Affidavit was brought to him within the Time limited in the Statute.

Then the Churchwardens, &c. may within eight Days after such Notice, bring the Certificate of the Minister to the Justice of Peace, who thereupon grants a Warrant to levy the Forfeiture.

Ministers and Magistrates neglecting their Duties, forfeit five Pounds for every Offence; to be recovered by Action of Debt, Bill, Plaint or Information, so as it be commenced within six Months after the Offence; one Fourth to the King, two other Parts to the Poor, &c. where the Offender dwells, the other fourth Part to the Informer.

The Form of a Certificate of the Minister where no Affidavit was brought.

To the Churchwardens and Overseers of the Poor of the Parish of, &c.

Suffex, ff. **I** G. W. Rector of R. in the County aforesaid, do hereby certify unto you, That E. A. was buried in the said Parish of R. on Thursday the 21st Day of this Instant April, and that within eight Days next after the said Burial no Affidavit was brought to me concerning the Burial of the said E. A. in Wollen, pursuant to the Statute in that Case made and provided. Witness my Hand the 30th Day of April, &c.

A Warrant to levy the five Pounds.

To the Constable and Headborough of, &c.

Suffex, ff. **W** Hereas I have received a Certificate under the Hand of G. W. Rector of the Parish of R. in the County aforesaid, bearing Date the 30th Day of, &c. That E. A. was buried in the said Parish on Thursday, &c. and that the said G. W. had not received an Affidavit, within eight Days afterwards, that the said E. A. was buried or wrap'd in no other Materials but Sheeps Wool only, pursuant to the Statute in that Case made and provided: These are therefore to require you forthwith to levy the Sum of five Pounds of lawful Money, by Distress and Sale of the Goods and Chattels of the said Deceased; and that you apply one * Moiety thereof to the Use of the Poor of the said Parish of R. where the said E. A. was buried. Given under my Hand and Seal, &c.

* Or er
Moiety to
the Prose-
cutor,

Wreck'd Ships, Goods, &c.

T HIS Statute reciting those of 3 Ed. 1. & 4 Ed. 1. de officio 12 A. S. 4
Coronatoris concerning Wrecks, enacts, That the Sheriffs, c. 18.
Justices of Peace, Mayors, Bailiffs, and other Head Officers
of Counties, Cities, Towns, &c. near the Sea, and all Con-
stables, Headboroughs, Tithing-men, and Officers of the Cu-
stoms, shall on Application made by, or on Behalf of any Com-
mander or Chief Officer of any Ship or Vessel in Danger of
being stranded or run on Shore, command the Constables of
the

the several Ports nearest the Sea-Coasts, to summon and call together as many Men as shall be thought necessary for the Defence and Preservation of such Ships, &c. and their Cargo's.

And if any Man of War, or Merchant Ship, be at Anchor near the Place, the Officers of the Customs and Constables aforesaid, are to demand of the Superior Officers of such Ships, Assistance by their Boats, and such Hands as they can spare, for the Service and Preservation of the Ship in Distress. And if such Officer shall refuse such Assistance, he forfeits 100 l. to the Superior Officer of the Ship in Distress, to be recovered with Costs of Suit in any Court of Record, by Action, Debt, Bill, &c. and no Essoin, &c.

Charges of Salvage to be allowed. But such Officers of the Customs, Commanders of Ships, &c. so employ'd in preserving such Ship or Cargo, shall within thirty Days after be paid a reasonable Reward for the same by the Commander, Master or Owner of the Ship in Distress, or by the Merchant whose Ship or Goods were saved; and in Default, the said Ship or Goods shall remain with the Officer of the Customs, or his Deputy, till all Charges be paid; and the said Officer and Deputy, and the Master and Mariners of the Ship assisting, be reasonably gratify'd, or good Security given for the same.

3 Justices to adjust the *Quantum*. And if after such Salvage, the Commander, Mariners, or Owners of the Ship saved, or Merchant whose Goods were saved, shall disagree with the Officers of the Customs, or his Deputy, touching the Monies deserved by any of the Persons employ'd, the said Commander of the Ship saved, or Owner of the Goods, or Merchants interested therein, or the Officer of the Customs, or his Deputy, may nominate three neighbouring Justices, who shall adjust the *Quantum* of the Monies or Gratuities to be paid to the several Persons employed: And such Adjustment is to be binding to all Parties, and recoverable by Action in any of the King's Courts of Record by the Persons to whom allotted.

If no Claim, Goods to be sold, and the Money paid in to the Exchequer. And if no Person makes Claim to any of the Goods saved, the Chief Officer of the Customs of the nearest Port shall apply to three of the nearest Justices, who shall put him or some other responsible Person in Possession of the Goods, the Justices taking an Account of the same, to be signed by the said Officer: And if the Goods are not claimed within 12 Months after by the right Owner, they shall be publickly sold; or if perishable, presently sold; and after all Charges deducted, the Residue of the Monies, with a fair and just Account of the Whole transmitted to the Exchequer, there to remain for the Benefit of the Owner, when appearing, who on Affidavit or other Proof of his Property thereto, to the Satisfaction of one of the Barons of the Coif there, shall upon his Order receive the same out of the Exchequer.

And if any Persons, besides those impower'd by the Officer ^{Ships in} of the Customs or his Deputy, and Constables, &c. shall enter, ^{distress not} or endeavour to enter any such Ship without Leave of the ^{to be en-} Commander thereof, or shall impede or hinder the Saving such ^{red with-} Ship or Goods; or when such Goods are saved, shall take out ^{out Leave.} or deface the Marks thereof, before taken down in Books, to be provided by the Commander and Chief Officer of the Customs, such Persons shall within twenty Days make double Satisfaction to the Party grieved at the Discretion of two next Justices; or in Default, be sent by such Justices to the House of Correction to hard Labour for twelve Months ensuing: And any such Commander, Officer of Customs, Constables, &c. on Board such Ship, may repel by Force, any that without Leave, *ut supra*, shall press on Board, or molest them in preserving the said Ship, &c.

If any Goods be stoln, or carried off out of such Ship, they are immediately to be delivered up to the Owner, &c. or in Default forfeit treble the Value; recoverable by Action at Law.

And making Holes in such Ship, or stealing the Pump, or ^{Felony.} doing any Act tending to the immediate Loss of the Ship, is Felony without Benefit of Clergy.

The General Issue may be pleaded to any Action brought for any Thing done in Pursuance of this Act, and this Act and the Special Matter given in Evidence; and if the Plaintiff be Nonsuit, or forbear Prosecution, or discontinue, or a Verdict be against him, or Judgment on Demurrer, the Defendant is to have full Costs, recoverable as if awarded by Law.

This is to be a publick Act; and all Judges and Justices to take Notice thereof, without Special Pleading the same.

Custom-House Officers abusing their Trust in the Premises, and thereof convicted in Form of Law, are to forfeit treble Damages, recoverable in any Court of Record, and be disabled of Office.

The Act to be read four Times in the Year on *Sundays* in Sea-port Towns, and to commence 1 *Aug.* 1714, and continue three Years, and thence to the End of the next Sessions of Parliament.

Note, A Clause is therein that saves all Claims of the Crown and its Patentees, Lords of Manors, &c. to any Wreck or Wrecks, or Goods that are *Flotsam*, *Fetsam*, or *Lagan*.

The aforesaid Act 12 *Anna*, is now made perpetual, and 'tis ^{4 G. c. 12.} farther enacted, That nothing in that Act shall affect the ancient Jurisdiction of the Admiralty Court of the Cinque-Ports, but that the Officers thereof shall put the said Act in Execution within their Cinque-Ports.

And by a subsequent Act 'tis enacted, That Goods saved out ^{5 G. c. 11.} of any stranded Ship forced on Shore, nor being wreck'd Goods,
 or

or *Fetsam*, *Flossam*, or *Lagan*, shall, after Charges of Salvage and other Charges paid, be liable to pay Customs.

Yorkshire West-riding.

7 Anne.

THIS Part of *Yorkshire* is the chiefest Place in the North of England for Woollen Manufacture, and most of the Traders in Wool there are Freeholders; but because there was no Register, they found it difficult to borrow Money on Land-Securities; which tho' really good, yet did not satisfy the Lenders; therefore a Law was made, for a publick Register to be kept at *Wakefield*, in which a Memorandum of all Deeds and Wills were to be registred at the Election of the Party, and those which were not registred should be accounted fraudulent. That the Register should be chosen by Ballotting; that is, every Freeholder of 100 *l.* per Annum, should put in a Glass Vessel the Name of him that he would have chose.

That the Justices of the *West-riding*, for that Purpose assembled, should be the Scrutators of the Ballot, or the major Part of them, or any five they shall appoint.

That three Justices, &c. must swear the Register, and Two may swear his Deputy; and that when the Register is sworn, he must immediately enter into a Recognizance of 2000 *l.* with two Sureties before five Justices, for the true Performance of his Office.

The Recognizance must be transmitted by the five Justices, within one Month after the Date thereof, to the Remembrancer's Office; and these five Justices must approve of the Sureties under their Hands and Seals; which Approbation must be registred at the next Sessions. See the Act at large.

7 A. c. 13.

By the Stat. 7 *Anne*, If any Clothier make Cloth in *Yorkshire*, or expose to Sale broad Cloths, which, after well scoured and milled, shall be less than five Quarters and an half within the Lifts, and an End or half Cloth less than twenty-three Yards in Length, and a long or whole Cloth less than forty-six Yards in Length; and any whole thick Kerseys and whole thick Plains less than seventeen Yards and an half long, and three Quarters and an half broad when fully wet, shall forfeit 20 *s.* for every Inch wanting in the Breadth; and for every Yard the long Cloths shall exceed forty-six Yards, and the half Cloths shall exceed twenty-three Yards, and for every half Yard the thick Kerseys and thick Plains shall be shorter than seventeen Yards and an Half.

Mill-man in *Yorkshire* not fixing a Seal of Lead riveted and stamped with his Name at each End of the Cloth before it is carried from the Mill, containing the Number of Yards and Inches in the Cloths in Length and Breadth when wet, scoured and

and milled; or if any other Person take off, deface, counterfeit, or alter the Figures before the Cloth is exported or sold to Retailers, or stretch a Piece of Woollen Cloth more than an Inch in Breadth in a Quarter of a Yard, or a Piece of Broad Cloth more than a Yard in Length in twenty Yards, or the *whole thick Kersseys*, and *whole thick Plains*, more than half a Yard in every seventeen Yards and an Half; or any Fuller mil-ling or fulling in one Stock at the same Time, more than one *whole Broad Cloth*, or two half *Broad Cloths*, shall for every Of-fence forfeit 20 s.

The Conviction is to be by the Oath of any Searcher of Cloth for *Yorkshire*, or by the Oath of one Witness before a Justice, &c. who is neither a Merchant, or Trader in the Woollen Manufacture.

The Forfeiture, if not paid within seven Days after Conviction, to be levied by Distress and Sale of Goods, by a Warrant of the Justice, &c. before whom the Offender was convicted; one Moiety to the Informer, the other to the Poor of the Parish, &c. and if no Distress can be taken, then to be sent to the Common Gaol, or House of Correction, there to be kept to hard Labour for any Time not exceeding one Month.

The Penalties must be inflicted within ten Days after the Offence committed or discovered.

The Party grieved may appeal to the next Quarter-Sessions, and they may allow Costs.

If an Action is brought, &c. the Defendant may plead the General Issue, and give the Act and the Special Matter in Evidence; and if he recover, shall have treble Costs.

This is a public Act.

By the Statute 1 Georgii, all Yorkshire, called whole thick Kerseys, whole thick Plains, Huggabags, and broken quilled Kerseys, shall not be under eighteen Yards in Length, and no less than three Quarters and an Half broad by the Standard Yard-Wand, when fully wet, and shall be sealed as Yorkshire Cloths are directed by the Act 7 Anna, and under the same Penalties.

Any Clothier, &c. exposing Cloths to sell, wanting *One Inch* in Breadth, or *half a Yard* in Length, forfeits 20 s. or *stretching* them above an Inch in a Quarter of a Yard, or above half a Yard in Length, forfeits the like; or *fixing a Mark* on it, other than his own Christian and Surname, and Place of Residence, forfeits 50 s. to be levied as mentioned in that Act.

The Penalties must be inflicted within twenty-one Days after the Offence done or discovered.

The Party grieved may appeal to the next Quarter-Sessions, whose Determination shall be final, and they may give Costs.

lakes in the Ohio is enough and breadth when well stocked from the Mill, containing the Number of Vards and stamped with the Name at each head of the Ohio before it is

A Warrant to levy the 20 s. per Inch.

To the Constable, &c.

Yorkshire, ss. **W** Hereas A. B. of, &c. in the County aforesaid, Clothier, was duly convicted before me T. R. Esq; one of his Majesty's Justices of the Peace for the said County, and neither a Merchant or Trader in the Woollen Manufacture, that he the said A. B. did on the * 24th Day of July, make in the Parish of W. in the said County of York † one Broad Cloth, commonly called an End or half Cloth, which after it was scoured, and fully milled, was and is one Inch less in Breadth than five Quarters and an Half by the Standard Yard-Wand, within the Lifts in the Water, being fully wet, by Reason whereof he hath forfeited 20 s. These are therefore to require you forthwith to levy the said Sum of 20 s. on the Goods and Chattels of the said A. B. by Distress and Sale thereof, rendering to him the Overplus, if any shall be, after just Charges for taking the said Distress; and that you pay one Moiety thereof to R. B. who first informed me of the said Offence, and the other Moiety to the Churchwardens and Overseers of the Poor of the Parish of W. where the same was done, for the Use of the Poor of that Parish. Given, &c.

* This must
be within
ten Days
before the
Date of the
Warrant.
† Or as the
Offence is.

F I N I S.



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none

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